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RULES

OF

PRACTICE

IN THE COURT OF KING'S BENCH, FOR
THE DISTRICT OF QUEBEC,

LOWER CANADA.

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PROVINCE OF LOWER-CANADA**DISTRICT OF QUEBEC.**

IN THE COURT OF KING'S BENCH.

ORDERS AND RULES OF PRACTICE of the Term of October in the forty ninth year of the reign of our Sovereign Lord George the Third by the Grace of God of the United Kingdom of Great-Britain and Ireland King, defender of the faith, and in the year of our Lord Christ one thousand eight hundred and nine.

PREAMBLE.

WHEREAS in and by the Provincial Statute made and passed in the forty first year of the reign of our Sovereign Lord George the Third by the grace of God of the United King

dom of Great-Britain and Ireland King
defender of the faith intituled "*An Act*
"*to amend certain forms of proceeding*
"*in the Courts of Civil Judicature in*
"*this Province and to facilitate the ad-*
"*ministration of Justice,*" it is a-
mongst other things enacted and declar-
ed "*that the different Courts of Civil*
"*Judicature in this Province shall have*
"*power and authority to make and es-*
"*tablish such Orders and Rules of*
"*Practise in the said Courts in all ci-*
"*vil matters, touching all Services of*
"*Process, execution and returns of all*
"*Writs, Proceedings for bringing cau-*
"*ses to issue, as well in term time, as*
"*out of term, and other matters of re-*
"*gulation within the said Courts.*" It
is therefore ordered by the Court of our
Lord the King, now here, as follows,
that is to say,

SECTION 1st.

OF THE COURT.

IT IS ORDERED,

I.

That, on the first day of each Superior term, the Court be opened at the hour of ten in the forenoon, and at the hour of ten in the forenoon of each Succeeding Juridical day in each term.

II.

That the Several days herein after mentioned shall, in each term respectively, be taken and held to be holy days, within the intent and meaning of the 3d. Section of the Provincial Statute 35. Geo. III. Chap. 1st. that is to say, ~~the Purification~~, Good Friday, Ascension, his Majesty's birth day, and the day of Corpus Christi; and that on these Several Holy days this court shall not sit or be held, but that this court shall sit and be held on every other day (Sundays excepted) in each term respectively.

III.

That, at the opening of the court on each Juridical day in term, all defendants who by writ shall be legally summoned then and there to appear in person or by attorney, for whom no appearance shall have been entered, and all defendants who by writ shall be legally summoned then and there to appear in their own proper persons shall of course, and without any motion for that purpose, be called by the Cryer of this court from a list of all such defendants to be furnished and certified by the Prothonotary, and that in like manner upon each Juridical day in term, which, with respect to any defendants, shall under the 3d. Section of the Provincial Statute 41. Geo. III. Chap. 7. be the *tertius dies post*, such last mentioned defendants and each of them, at the opening of the court upon such day, shall of course, and without any motion for that purpose, be called by the Cryer of this court from a list of all such defendants to be furnished and certified by the Prothonotary.

IV.

That on each Juridical day of term, when, and so soon as the defendants mentioned in the next preceding article shall have been called, the court shall proceed to hear all such motions as shall be offered by the King's Counsel and Barristers, who shall be present in court and habited, as herein after is directed ; each making in Succession, according to his precedence and Seniority at the Bar respectively, one motion, until the whole shall be heard, and in like manner hear all petitions which shall be so offered. That the Court shall then proceed to the hearing and examination of all matters whatsoever especially appointed by any rule or order of the Court for the day, and thereafter in the manner herein after directed, to the examination of witnesses, and to the hearing of all issues in fact and in law, which shall be raised by the pleadings in any cause.

V.

That in each Superior term there shall be three days set apart for the exa-

8 **OF THE COURT. Sect. 1st.**

mination of witnesses, which shall be the second, eighth and thirtheerth Juridical days of each term respectively ; and upon any such day no issue of fact or law, which shall be raised by the pleadings in any cause, shall be heard ; unless such issue shall, by some rule or order of the court, be appointed especially for hearing upon such day ; and all such issues of fact or law, as are herein before mentioned, shall be heard upon any Juridical day in term not set apart for the examination of witnesses, and upon any such day no witnesses shall be examined in any cause ; unless the examination of such witnesses shall, by some rule or order of the Court, be appointed especially for, or continued to, such day,

OF THE OFFIC. OF THE CT. Sect. 2. 9.

SECTION 2d.

OF THE KING'S COUNSEL, OF BARRISTERS, OF ATTORNIES AND OF OTHER OFFICERS OF THE COURT.

IT IS ORDERED,

Ist.

That the King's Counsel and all Barristers who do, or shall, practise in this Court, do appear, when in Court, habited in black and in such Robes and Bands as are worn by the King's Counsel and Barristers in Westminster-Hall, with their hair in Bags, as heretofore hath been used ; and that no such counsel or Barrister be heard in any cause who is not so habited.

II.

That the Prothonotaries of this Court do appear, when in Court, habited in black, and in such Robes and Bands as are worn by the Prothonotaries in Westminster-Hall, with their hair in bags, as heretofore hath been used ; that the Sheriff also, when in Court, do

B

10 OF THE OFFIC. OF THE CT. Sect 2.

appear habited in black, with his hair in a bag, his Wand of office and Sword as heretofore hath been used ; and that the Cryer, when in court, do also appear habited in black and in such robe, as is worn by that officer in Westminster-Hall.

III.

That the Officers of this Court, or any, or either of them, shall not, during this or any subsequent term, be entitled to ask, demand, or receive, from any Barrister, or from any Attorney, or from any Barrister who shall practise as an Attorney, any fees of office which shall become due and payable to any such officer or officers by any such Barrister or Attorney, for services performed *during the course of such term*, fees for the making and sealing of writs, fees for the service of writs, of notices, and of other proceedings, and fees for office copies of every description, excepted.

IV.

That, within one Calendar month next after the last day of each term respectively, every Barrister, and every

OF THE OFFIC. OF THE CT. Sect. 2. 11

Attorney, and every Barrister who shall practise as an Attorney, shall discharge and pay unto the several Officers of this Court all legal fees whatever in which such Barristers and Attornies respectively shall then be justly indebted, and in arrear, unto the Officers of this Court, or unto any, or either of them respectively, and in case of refusal, or neglect, so to do, the Officer or Officers, to whom such fees shall be so due and payable, if he or they see fit, upon the first day of the next term, but not afterwards, shall and may deliver, unto one of the Justices of this Court, a complaint against such Barrister or Attorney, for the breach of this rule by such neglect or refusal ; which complaint shall be in writing and be signed by such Officer or Officers, and thereunto shall be annexed the several Bills of fees, which shall be so due and unpaid by such Barrister or Attorney, duly taxed according to law, and an affidavit to the following effect, Viz. " That such fees have " been demanded of the Barrister or " Attorney against whom such com :

12 OF THE OFFIC. OF THE CT. Sect. 2.

“ complaint shall be made, and that he
“ hath refused or neglected to discharge and pay the same ; that the whole
“ of such bills, or so much thereof as
“ hath been so demanded, (as the case
“ may be) is then due and owing to
“ the Officer or Officers making such
“ complaint by the Barrister or Attorney
“ against whom such complaint
“ shall be made, and lastly, that copies
“ of such bills, so taxed, and of such
“ complaint so made, with notice of
“ the intended delivery thereof to one
“ of the Justices of this Court, as hereby
“ is directed, have been duly served
“ upon such Barrister or Attorney for
“ the Space of three days at least before
“ the day upon which such complaint
“ shall be so delivered,” and in such
case, if such fees as aforesaid, so due and
unpaid, shall not by such Barrister or
Attorney be paid or otherwise satisfied
unto the Officer or Officers making
such complaint as aforesaid, on or before
the sixth day of the term in which
such complaint shall be so delivered to
such Justice, and if proof of such continued
neglect, or refusal, to pay, or

OF THE OFFIC. OF THE CT. Sect. 2. 13

otherwise satisfy, such fees, shall then also be made by the affidavit of such Officer or Officers, or otherwise to the satisfaction of the Court, such complaint, with the several exhibits thereunto annexed, upon the petition of such Officer or Officers, for that purpose, shall be read and fyled in open Court, and thereupon such Barrister or Attorney (if good cause to the contrary be not shown *instantly* by, or on the behalf of such Barrister or Attorney,) shall be held and taken, and be adjudged to be, guilty of a willful Breach of this rule, in contempt of this Court; and thereafter no motion shall be made or received, in any cause whatever, by or from such Barrister or Attorney, or by, or from any other Barrister or Attorney on his behalf, unless such fees, so due and unpaid, shall be wholly discharged and paid, or otherwise satisfied, unto the Officer or Officers making such complaint: it being nevertheless hereby provided, that this rule shall not extend, or be construed to extend, to any case or instance whatsoever, in which the Barrister or Attor-

14 OF THE OFFIC. OF THE CT. Sect. 2.

ney against whom any such complaint, as aforesaid, shall be made, by his affidavit, duly sworn and delivered to any one of the Justices of this Court, on or before the fifth day of the term in which such complaint shall be so made, shall deny that he is indebted to the Officer or Officers making such complaint, in the sum thereby demanded ; and that in all and every such case and instance, the Officer or Officers making the complaint, which shall be so denied, shall be left to his or their legal remedy by action against such Barrister or Attorney.

V.

That the respective Offices, of the Prothonotaries of this Court, and of the Sheriff of the District of Quebec, during every subsequent term, be open from the hour of eight in the morning until the hour of six in the afternoon of every day, (Sundays, and the Holy days enumerated in the II. article of the first Section, excepted) and during every subsequent vacation, from the hour of eight in the morning until the hour of noon, and from the hour of two until

OF THE OFFICE OF THE CT. Sect. 2. 15

the hour of four in the afternoon of each day, Sundays, and the following Holidays excepted, that is to say. the *Circumcision*, the *Epiphany*, the *Queen's Birth day*, the *Annuntiation*, *Good Friday*, the *Ascension*, the day of *corpus Christi*, the *King's accession*, *All Saints*, the *Conception* and the *Nativity* of our Lord.

VI.

That, the Sheriff of the District of Quebec, the Prothonotaries, and the Cryer, do personally attend in this Court, in their several and respective places, *de die in diem*, during each Superior term, from the opening until the rising of the Court, and in like manner during

16 OATHE OFFIS OF THE CT. Sect. 2.

all sittings of the Court held in vacation, by appointment or appointments thereof made in any proceeding term.

VII.

That, the rules and orders of practice, made and to be made in this Court, and all decisions of this Court, and of the Courts of appeal upon them or any of them, which this Court shall direct, shall be fairly entered, by the Prothonotaries, with an Index to the whole, in a book or books, to be by them, kept for that purpose, to which all Practisers, in this Court, shall, at all times during office hours, have free access, and be allowed to take extracts and copies *gratis*.

VIII.

That all writs, and all other practical forms, which are or shall be settled by this Court, with an Index to the whole, shall in like manner be fairly entered by the Prothonotaries in a register to be by them kept for that purpose, to which all Practisers in this Court shall, at all times during office hours, have free access and be allowed to take extracts and copies *gratis*.

IX.

That no change of Attornies, upon the application of any party or parties, for any cause whatever, shall in any case, be allowed, without a rule of this Court permitting such change, and substituting some other Attorney, in the place and Stead of the Attorney who by such change shall be put out of the cause, to be made upon motion for that purpose, with previous notice to the adverse party or parties, and to the Attorney or Attornies, to whom such motion shall refer.

X.

That an Attorney, who shall appear in this Court, for any person, or persons whosoever, shall not, (except for lawful cause of Sickness, necessary absence, or the like) be permitted to withdraw himself, from any suit, in which he shall so appear, without the consent of such person or persons, and from no suit whatever, for any cause whatever, without a rule of this Court permitting him to withdraw from such suit, and

18 OF THE OFFIC. OF THE CT. Sect. 2.

substituting, with the consent of the person or persons, for whom he shall have so appeared, some other Attorney in his place, to be made, upon motion for that purpose, with previous notice to the adverse party, and to the person or persons, for whom he shall so file an appearance,

XI.

That, in every suit, in which an Attorney, who shall appear for any party plaintiff, or defendant, shall be interdicted from practice, or die, pending such suit, all proceedings, against the party, for whom such Attorney, so interdicted or dying, shall have appeared, shall be staid for and during one entire term; and if, at the expiration of such term, such party shall not then have appointed, and caused to be substituted, by a rule of this Court, another Attorney, in the place of such Attorney, so interdicted or dying, it shall be competent to all other persons, being parties, to such suit, thereafter to proceed therein, as if the party, of such Attorney so interdicted or dying, had never appear-

OF THE OFFIC. OF THE Ct. Sect. 2. 19

ed ; it being nevertheless hereby provided that, in every suit, in which, it shall appear by affidavit or affidavits, to the satisfaction of the Court, that notice of the interdiction, or death of such Attorney, hath, by any of the parties to such suit, been duly served upon the party, for whom such Attorney, so interdicted or dying, hath appeared, or. that such last mentioned party, hath otherwise knowledge, of the interdiction, or death of such Attorney, and in which also, the party, of such Attorney, so interdicted or dying, being served with such notice, or having otherwise such knowledge as aforesaid, shall not within the space of the two juridical days of term next after the day, on which such affidavit, or affidavits as aforesaid, shall be fyled, appoint, and cause to be substituted, by a rule of this Court, another Attorney, in the place of such Attorney, so interdicted, or dying, it shall be competent to all other persons, being parties to such suit, thereafter to proceed therein, as if the party, of such At:

20 OF THE OFFIC. OF THE CT. Sect. 2.

torney, so interdicted, or dying, had never appeared.

XII.

That every Attorney, who, in any suit, by any rule of this Court, shall be substituted in the place of any other Attorney, shall forthwith fyle an appearance for the party or parties, for whom, such last mentioned Attorney shall have appeared, and shall not be permitted, in any manner, to proceed in such suit, until such appearance shall be fyled.

XIII.

That every Attorney, who shall be substituted, by a rule of this Court, in the place of any other Attorney, shall, at his peril, take notice of all rules, to which such last mentioned Attorney was liable; and every Attorney, who shall appear for any person or persons in this Court, shall be held and taken to be the Attorney of such person or persons, until some other Attorney shall, in the manner herein before directed, be substituted, by a rule of this Court, in his place; and until some other Attorney shall be so substituted, by a rule of

2. **OF THE OFFIC. OF THE CT. Sect. 2. 21**

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this Court, in the place of the Attorney, who shall so appear for any person or persons, all rules, notices, pleadings and other proceedings, which shall be duly served upon such last mentioned Attorney, shall be held and taken to be well and sufficiently served upon the Attorney of such last mentioned person or persons, as the case may be.

XIV.

That an Attorney, who shall appear for any party or parties, in any suit, in this Court, shall be held and taken to be the Attorney of such party or parties, in all matters and proceedings whatsoever, collateral and incidental to such suit, as well after as before final Judgment.

XV.

That no person, who shall be referred to the Justices of this Court, or to any of them, for examination, upon Petition to be admitted as a Barrister or Attorney, in his Majesty's Courts of law in this Province, or as a Notary, shall be examined, until notice of the time and place of such examination, and

22 OF THE OFFIC. OF THE CT. Sect. 2.

of the name of the person to be examined, shall be affixed, upon the out side of the Court house of this District, in such place as public notices are usually affixed, and shall there have remained, for and during the space of one week; and that no such examination shall be had, until (in the case of an application to be admitted as a Barrister or Attorney) an affidavit of the person to be examined, or of the Barrister, Attorney, Clerk, or Prothonotary to whom he was bound, shall be made and filed, to the following effect, Viz. “ that according
“ to the intent and meaning of the Provincial Ordinance 25. GEO. III. c. 4.
“ he hath *bona fide* served a regular and
“ continued Clerkship, for and during
“ the space of five years, under a Contract in writing, (to be thereunto annexed) for that purpose made and entered into, with some Advocate or Attorney, duly admitted and practising
“ in the Courts of Civil Judicature, in
“ this Province, or in some other part
“ of his Majesty's Dominions, or with
“ some Clerk or Register of some Court
“ of King's Bench, or Court of Ap-

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OF THE OFFICE. OF THE CT. Sect. 2. 23

" peals, within this Province, for and
" during the space of six years; or that
" such person hath been already called
" to the Bar, or intitled so to be, and
" to practise, as an Advocate, or At-
" torney, in some Court of Civil Juris-
" diction, within some part of his Ma-
" jesty's Dominions;" and, in the case
of an application to be admitted as a No-
tary, " that he hath *bonâ fide* served a
" regular and continued Clerkship, for
" and during the space of five years,
" under a Contract in writing, (to be
" thereunto annexed) for that purpose
" made and entered into, with some No-
" tary duly commissioned and appoint-
" ed, and practising as such," shall
have been duly made and delivered to
the Justice or Justices, before whom
such examination shall be had.

XVI.

That no Barrister or Attorney shall
hereafter be admitted to practise, in this
Court, until, in addition to the state
Oaths, he shall have taken and subscrib-
ed, upon a roll to be kept by the Pro-
thonotaries of this Court, for that pur-

24 OF THE OFFIC. OF THE CT. Sect 2.

pose, the following oath, *I. A. B. do Swear, that I will truly and honestly demean myself, in the practice of a Barrister and Attorney, according to the best of my ability, learning, and discretion.*

SO HELP ME GOD.

XVII.

That no Barrister, or Attorney, Prothonotary, Cryer, Bailiff or Sheriff's Officer, shall be Bail in any action, or suit, depending in this Court.

XVIII.

That no Barrister, or Attorney, who shall legally be dismissed, or suspended from Practice, in any other of his Majesty's Courts of law, shall be admitted to practise in this Court, until such Barrister, or Attorney, shall have been readmitted to practise, in the Court, in which he hath so been dismissed, or suspended from practice.

XIX.

That no Attorney of this Court, upon pain of interdiction, do permit any one to practise in his name.

XX.

That every Attorney of this Court, before the first day of February next, shall make and fyle, with the Prothonotary of this Court, under his signature, an entry in writing of his name and place of abode ; and every Attorney hereafter to be admitted shall, upon his admission, make and fyle a like entry ; and as often as any such Attorney shall change his place of abode, he shall make and fyle a like entry of such change ; and all pleadings, summonses, orders, rules, notices, and other proceedings, which do not require personal service, shall be deemed and taken to be well and sufficiently served on such Attorney, if the same be served, at the place last entered, as aforesaid by such Attorney, on any grown person resident at, or belonging to such place ; and no Attorney shall after the thirty first day of January next be admitted to appear or act, in any case, until such entry as aforesaid shall have been so made and fyled.

26 OF GENERAL RULES, Sect. 3.

SECTION 3d.

GENERAL RULES,

IT IS ORDERED,

I.

That every wilful and unlawful breach of an order or rule of practice of this Court, (for which no fine or other specific punishment is provided in the body of such other rule,) shall be taken and considered to be a contempt of Court, in the person, or persons, guilty of such breach as aforesaid, and punished accordingly.

II.

That a point of practice settled by a judgment of this Court, and entered on the Prothonotary's book of rules, shall not be reargued.

III.

That any party to a suit, on motion and payment of costs, shall be permitted to repair any default, omission, or neglect, of which he, she, or they may have been guilty, in contravention of any order or rule of practice, until his,

her, or their opponent, or opponents, or some one, or more of them shall have taken advantage of such default, omission, or neglect, by moving, or otherwise proceeding thereupon; provided such party, at the time of making such motion to repair such default, omission, or neglect, shall not be foreclosed from so doing, by any positive law, or by any order, or judgment of the Court, in such cause made, or by the express terms of the order or rule of practice so contravened.

IV.

That when, and so often as the opponent, or opponents of any party or parties to any suit hath, or have taken advantage of any default, omission, or neglect, of which any such party, or parties may have been guilty, in contravention of any order or rule of practice, by moving or otherwise proceeding thereupon, and such party, or parties, so guilty of such contravention, shall be advised and see fit to apply to the Court for relief, against the effects of such default,

28 OF GENERAL RULES, Sect 3.

omission, or neglect, by motion or application of any other description, such motion, or application, shall not be received or fyled, unless it be accompanied by an affidavit of the special circumstances of fact, upon which such motion or application is founded, and by an affidavit, or Bailiff's certificate, of the due service of a copy of such affidavit of special circumstances, and of due notice of such motion upon such opponent, or opponents, as the case may be.

V.

That every rule and order of this Court, which shall be made and pronounced, *sedente curiâ*, in any cause, in the presence of a party thereunto, or of his Attorney *ad litem*, shall be considered and held to be sufficiently and duly notified unto such party, so present in person, or by his Attorney.

VI.

That every rule, order, and Interlocutory Judgment, which shall be made, or pronounced, in any cause, shall be considered and held to be po

remptory, if the contrary do not appear, upon the face of such rule, order, or Interlocutory Judgment.

VII.

That all writs, and process whatsoever, which shall hereafter be issued, shall be tested of the day, on which such writ, or process, shall issue.

VIII.

That all orders and rules for the conduct and regulation of the Sheriff, in the execution of his duty, or of any part thereof, shall extend to the Coroner, in all cases, in which from any cause whatever such duty, or any part thereof, shall be executed by him.

IX.

That all pleadings, notices, summonses by the Justices of this Court, rules, orders and judgments, and all other matters, and proceedings, of which service is, or shall be required upon any party, in any suit depending in this Court, shall be served upon the Attorney *ad litem*, who in this Court shall have appeared for such party, and

30 OF GENERAL RULES, Sect. 3.

in default of such appearance by Attorney, at the elected domicile of such party, if such party shall have appeared personally ; those instances nevertheless excepted, in which personal service upon such party is, by law, by any rule, or order of practice, or by some special rule or order made in such suit, required or directed.

X.

That any pleading, notice, summons, rule, order, judgment, or other matter or proceeding, of which service is or shall be required upon any party, in any suit depending in this Court, which shall be served upon any grown person at the office of the Attorney, who shall have appeared for such party, and in default of such appearance by Attorney, upon any grown person, at the elected domicile of such party, if such party shall have appeared personally, shall be held and taken to be well and sufficiently served ; those instances excepted, in which personal service upon such party is by law, by any rule or order of practice, or by some special

OF GENERAL RULES, Sect. 3. 31

rule or order made in such suit, required or directed.

XI.

That proof of service of pleadings, and of notices, by the affidavit of one desinterested witness duly sworn before one of the Justices of this Court, or before a commissioner duly authorised to take and receive affidavits to be read and used in this Court, or by the certificate of any Bailiff of this Court, shall be deemed and taken to be good and sufficient, and shall be, in the form prescribed, in the Appendix to these rules and orders, under the number I; and that proof of the service of any summons issued by one or more of the justices of this Court, of any writ of Subpæna, or of any rule, order, or judgment of this Court, by like certificate, shall be deemed and taken to be good and sufficient, and shall be in the form prescribed, in the Appendix to these rules and orders, under the number II.

XII.

That every affidavit, or Bailiff's certificate, of the service of any pleadings,

32 OF GENERAL RULES, Sect. 3.

notice, rule, order, Interlocutory judgment, Subpæna, or other matter, shall particularly describe the manner, place, and hour of such service, and shall not otherwise be received or fyled; and if from such affidavit, or certificate, it shall appear that such service was made upon a Sunday, or Holiday, or upon any other day before the hour of six in the morning, or after the hour of eight in the evening, such service shall be held and taken to be wholly ineffectual and void, to all intents and purposes whatsoever.

XIII.

That, in all computations of time, or delays, upon any writ, summons, rule, order, or judgment of this Court, or upon the fyling, or service of any such writ, summons, rule, order, or judgment, or of any pleading, or notice, and generally upon and in all proceedings whatsoever (not otherwise particularly provided for) the day, on which such writ, summons, rule, order, or judgment shall be made, or upon which the fyling or service of any such writ, rule,

OF GENERAL RULES, Sect. 3. 33

order, or judgment, or of any such summons, pleading, or notice, shall be had, or upon which such other proceeding as aforesaid shall, in like manner be had, shall not be reckoned or counted to be one, but every other day to which such computation of time shall refer, (Sundays and Holidays not excepted) shall be reckoned and counted to be one, and no fractions of time shall, in any such computations, be made or allowed: it being nevertheless provided that, in all cases, in which any period allowed, by any writ, summons, rule, order or rule of practice, or judgment of this Court, shall expire upon a Sunday or Holiday, such period shall, *ipso facto*, stand enlarged until the then next Juridical day.

XIV.

That no paper of any description whatsoever shall be received, or filed, in any cause whatever, by the Prothonotary of this Court, unless the same be regularly docketed with the title and number of the cause, and the general description of such paper.

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34 OF GENERAL RULES, Sect. 3.

XV.

That in all suits, which shall hereafter be heard in this Court, no more than two Counsel shall be heard in opening, or in answer, and one only in reply.

XVI.

That every case, in which, on the part of the plaintiff or plaintiffs, there shall have been no proceedings for one whole term, exclusive of the term, in which, the last proceeding, on the part of such plaintiff or plaintiffs was had, shall, on motion of the defendant or defendants therein grounded, upon the certificate of the Prothonotary, that no proceedings have been so had, be dismissed, *sauf à se pourvoir*; unless good cause to the contrary be shown by such plaintiff or plaintiffs.

XVII.

That all rules, and orders, for the conduct, and regulation, of any Attorney or Counsel in this court, in any case therein depending, shall extend to the party and parties in such case, where no appearance by Attorney shall have been entered for or on the behalf of such par-

OF GENERAL RULES, Sect. 3. 35

ty or parties, and be rules, and orders, for the conduct and regulation of such party or parties, in such case, for whom no appearance by Attorney shall have been entered, in all things.

XVIII.

That every order of any Justice of this Court, which shall be obtained upon Summons in vacation, shall be subject to an appeal to this Court, and the validity thereof impeached, by moving the Court to set such order aside, or to set aside the proceedings, which have been had, under it : it being nevertheless provided, that any such order, which shall be made by consent, or be otherwise acquiesced in, shall be as valid as any act of the Court.

XIX.

That every case, suit, or action, in which there shall have been no proceedings whatever, for two whole terms, exclusive of the term, in which the last proceeding was had, shall be deemed and taken to be deserted by all parties, and thereupon by the Court, *ex officio*,

36 OF GENERAL RULES, Sect. 3.

dismissed, *sauf à se pourvoir* ; each party paying his own costs ; and to this end, there shall be laid, before the Court, by the Prothonotary upon the first day of every future term, a list of all cases, suits, or actions, now, or hereafter to be, depending in this Court, which shall have been so deserted.

XX.

That all proceedings, upon writs of *certiorari*, *prohibition*, *mandamus*, *quo warranto*, and *habeas corpus*, and upon each of them respectively, be, in all things, similar to the proceedings, upon such writs, in his Majesty's Courts of King's Bench in Westminster-Hall.

XXI.

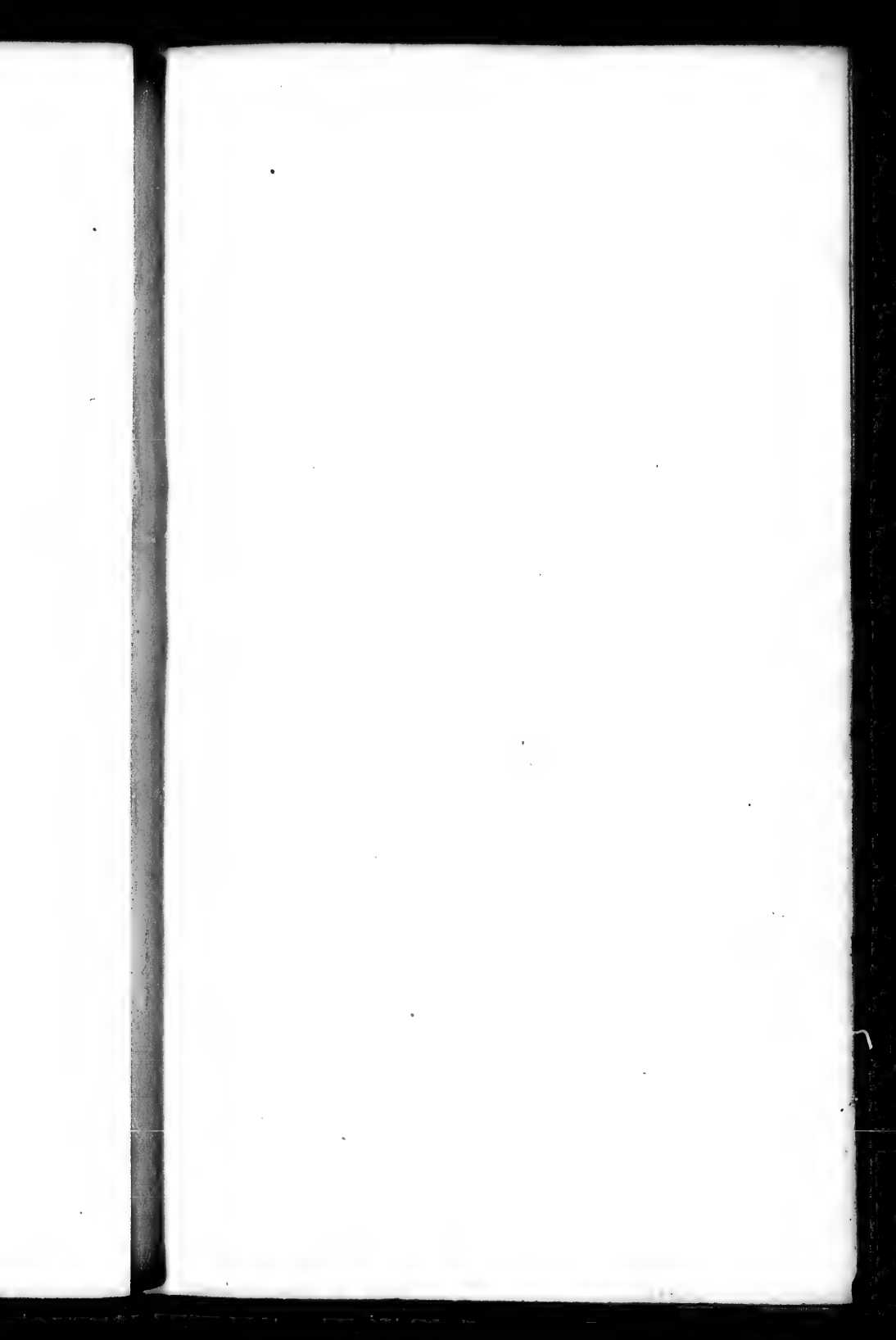
That every commission, to take and receive affidavits, to be read, and used, in this Court, under the Statute 48. Geo. III. Chap. 22, be in the form prescribed, in the appendix to these rules and orders, under the number III.

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SECTION 4th.

OF PROCESS AD RESPONDENDUM,

IT IS ORDERED,

I.

That the ordinary process *ad respondendum*, or writ of summons, shall be in the form prescribed, in the appendix to these rules and orders, under the number IV. and no other.

II.

That the extraordinary process *ad respondendum* herein after mentioned, that is to say, the writ of *capias ad respondendum*, the writ of simple attachment, or simple *arrêt*, the writ of attachment ~~and~~ seizure, or *saisie arrêt*, the writ of distress or *saisie gagerie*, and the writ of summons in *garantie formelle* and *simple*, shall be in the forms prescribed for such writs severally and respectively, in the appendix to these rules and orders, under the numbers V. VI. VII. VIII. IX. and in no others.

III.

That no process *ad respondendum*, of any description, sued out by the ministry

38 OF PROCESS AD RESP. Sect. 4.

of an Attorney *ad litem*, shall issue, until an appearance, for the person or persons requiring such process, and a *præcipe* for the same, under the signature of such Attorney, shall be fyled, in the office of the Prothonotary ; which appearance and *præcipe* shall be in the form prescribed, in the appendix to these rules and orders, under the number X ; and no other appearance shall be required or received for such person or persons, except in the case of change of Attornies, as herein before directed.

IV

That no process *ad respondendum*, of any description, sued out, without the ministry of an Attorney *ad litem*, by any person or persons who by law are entitled, and shall deem it prudent to sue out such process, without the ministry of an Attorney, shall issue, until the appearance of such person or persons, with the election of a domicile, at some house, within the limits of the City of Quebec, and a *præcipe*, for such process made under the signature or signatures of such person or persons, in the

OF PROCESS AD RESP. Sect. 4. 39

presence of two Notaries, or of a Notary and two Witnesses, shall be fyled in the office of the Prothonotaries ; which appearance, election of domicile, and *præcipe*, shall be in the form prescribed, in the appendix to these rules and orders, under the number XI ; and all pleadings, notices, rules, judgments and other proceedings, which during any action so ~~intituled~~ *intituled* shall be served *for* at the domicile so elected, shall be held, and taken, to be well and sufficiently served upon the person or persons by whom such domicile shall be so elected.

V.

That every action, which shall be commenced by any process *ad respondendum*, of any description, which shall not be served, or be imperfectly served, shall and may be continued by an *Alias* and *pluries* process, of the same description ; and that such *alias* and *pluries* process, as the case may be, shall be issued (without motion or application to the Court of any description) from the office of the Prothonotary, upon a *præcipe* for such *alias*, or *pluries* pro-

40 OF PROCESS AD RESP. Sect. 4-

cess, under the signature of the Attorney *ad litem*, or of the person or persons, by whom such *alias* or *pluries* process, shall be so sued out.

VI.

That all returns, upon any process *ad respondendum*, shall be made and signed by the Sheriff, to whom such process shall be addressed ; and that the certificate of the Sheriff's officer, by whom such process shall be served, shall not be annexed, or referred to, in any such return.

VII.

That every return, upon any process *ad respondendum*, of any description, shall specify the manner, time, and place of such service ; and particularly the parish, and county, in which, such place is situate, and the distance thereof from the Court house of the District of Quebec.

VIII.

That in all cases, in which the service of any process *ad respondendum* shall be made in the county of Quebec,

OF PROCESS AD RESP. Sect. 4. 41

there shall be three intermediate days, at least, between the day of service and the day of return; and in all cases, in which, the service of any such process shall be made at any place, without the limits of the county of Quebec, there shall, in like manner, between the day of service, and the day of return, be three intermediate days, and one other intermediate day for every five leagues of distance, which, upon the face of the Sheriff's return, there shall appear to be between the place, at which such process shall be served, and the Court House of the District of Quebec, in the case of service upon one defendant only; and in the case of services upon two or more defendants, between the most distant place, at which such process shall be served, and the said Court House of the District of Quebec; that each such intermediate day (Sundays and Holidays not excepted) shall be reckoned and counted to be one; and that no service, of less delay than is hereby required, in each case respectively, shall be held or taken to be a valid service, nor shall a

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42 OF PROCESS AD RESP. Sect. 4.

default, in case of non appearance, be allowed thereon.

IX.

That no process *ad respondendum* founded upon *affidavit*, shall issue, in any suit, untill the *affidavit*, upon which such process is founded, shall be fyled of record, by the plaintiff or plaintiffs in such suit, in the office of the Prothonotary ; and of such *affidavit* the defendant or defendants, in such suit, shall, at all times, be entitled to copies certified by the Prothonotary, at the rate of six pence per folio of one hundred words each.

X.

That every process *ad respondendum*, upon which bail is required, shall be indorsed in these words *Viz. issued upon the affidavit of* _____ *for the sum of* _____ and shall be signed by the Attorney, by whose ministry such process shall be sued out, and by the plaintiff or plaintiffs in the suit, in which such process shall be issued, if no Attorney shall have appeared for him, her or them. And the penalty of the Bail Bond or Bond

OF PROCESS AD RESP. Sect. 4. 43

to the Sheriff, in every such suit, shall be double the amount so sworn to and indorsed ; it being hereby provided that no such process *ad respondendum*, upon which bail is required, shall be executed, until such indorsement thereon shall be made, and signed as aforesaid.

XI.

That every Bail Bond taken by the Sheriff, upon any writ of *Capias ad respondendum*, shall be in the form prescribed, in the appendix to those rules and orders, under the number XII. /e

XII.

That all and every process *ad respondendum*, which shall be hereafter issued, shall by the Sheriff, to whom the same shall be directed, be returned into the office of the Prothonotary, on or before the return day of such process, and before the hour of eight of the clock in the forenoon of such return day.

XIII.

That a register of all and every process *ad respondendum* whatsoever, issued

44 OF APPEAR. DEFT. & BAIL. Sect. 5.

from this Court, specifying the parties, the amount demanded, the cause of action, and the return day of each process respectively, shall be made by, and kept in the office of the Prothonotaries, to which all persons shall, at all times, during office hours, have access *gratis*.

SECTION 5th.

OF DEFAULTS, OF APPEARANCE BY DEFENDANTS, AND OF BAIL.

IT IS ORDERED,

I.

That the default of every defendant, who shall be called, under the third article of the 1st. Section, and shall not appear, shall be recorded of course, and without any motion for that purpose.

II.

That such default, once recorded, shall not be taken off, without payment of ten shillings costs to the plaintiff, or his Attorney ; the case excepted, in which the plaintiff sues *in formâ pauperis*, in which no costs shall be paid.

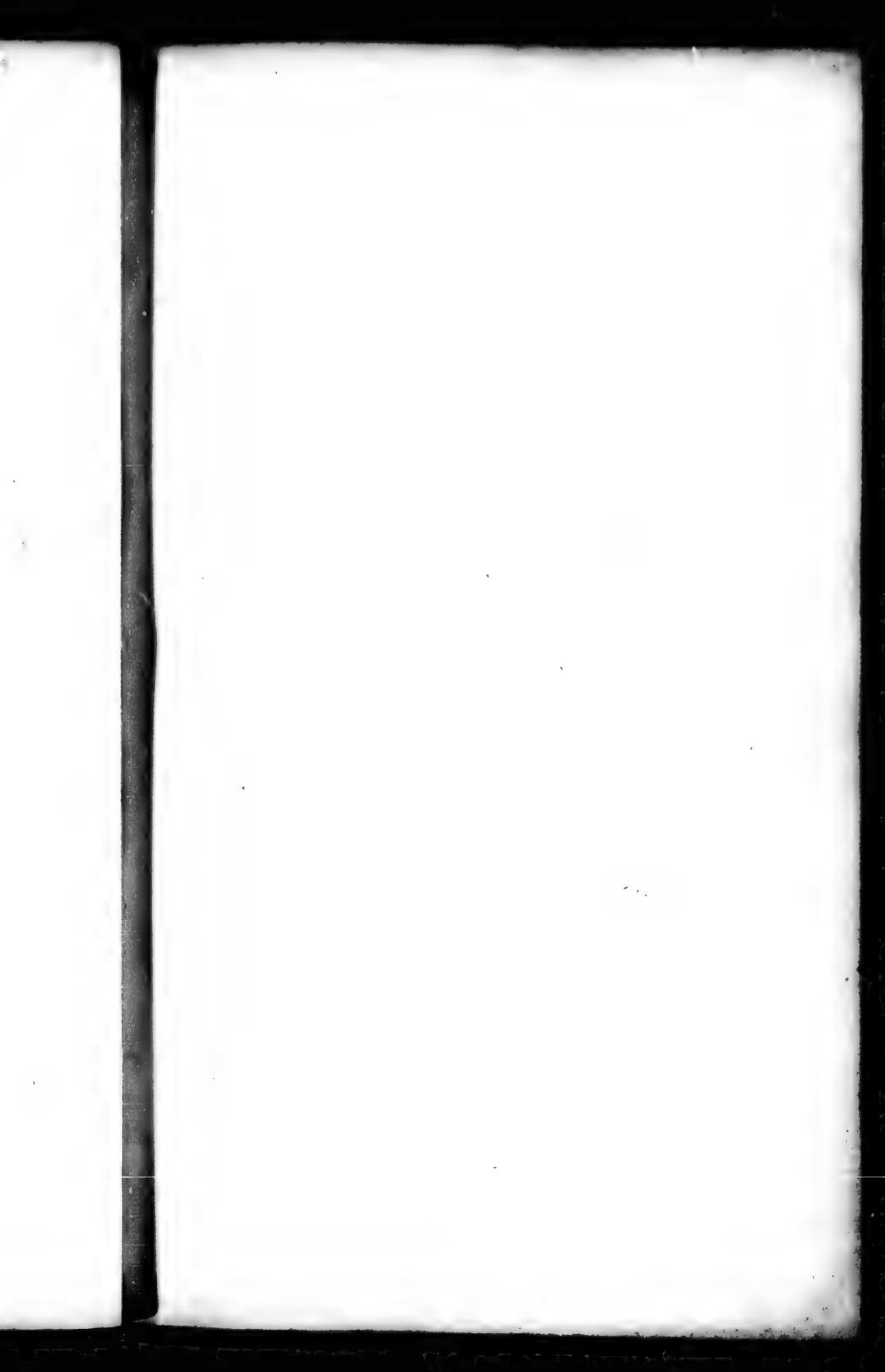
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III.

That no defendant shall be heard, until he has appeared, in the manner herein after directed.

IV.

That every appearance, in any suit whatever, by an Attorney of this Court for any defendant or defendants, who legally may appear by Attorney, upon process *ad respondendum*, or any other process, shall be in the form prescribed, in the Appendix to these rules and orders, under the number XIII; and if such appearance be fyled in the office of the Prothonotary, at any time before the hour at which such defendant or defendants, by such process, is or are commanded to appear, or thereafter at any time before the hour of ten in the morning of the *tertius dies post*, with a deposit of the sum of ten shillings for the first default, as heretofore hath been used, the appearance of such defendant, or defendants, shall be held and taken to be well and sufficiently entered; and no other appearance, in such suit, shall thereafter be received, for any such de-

46 OF APPEAR. DEFT. & BAIL. Sect. 5.

defendant or defendants except in the case of change of Attornies, as hercin before directed.

V.

That, of every appearance, which in any suit, shall be fyled for any defendant or defendants, at the office, or in open Court, a duplicate shall be served upon the Attorney who shall have appeared for the plaintiff or plaintiffs, or at the elected domicile of such plaintiff or plaintiffs, if he, she, or they, shall not have appeared by Attorney.

VI.

That every defendant, who, in obedience to any process *ad respondendum*, shall, in any suit, deem it prudent to appear in person, shall be held and bound to appear in open Court ; and at the time of his or her appearance, shall fyle an appearance in writing, with an election of domicile, at some house within the limits of the City of Quebec, under his or her signature ; which appearance, and election of domicile, shall be in the form prescribed, in the Appendix to these rules and orders, under

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OF APPEAR. DEFT. & BAIL Sect. 5. 47

the number XIV; unless the Court shall see fit to direct such appearance and election of domicile to be entered of record, and grant act thereof, in which case, such writing under the hand of such defendant shall not be required; and in default of the fying and of the entry of such appearance and election of domicile, the plaintiff or plaintiffs, in such suit, may proceed thereon, as if such defendant had not appeared.

VII.

That no plea to the Jurisdiction (*exception déclinatoire*) shall be fyled by any defendant, until an appearance shall be entered by or for such defendant, in manner herein before directed; which appearance, in such case, shall be considered and held to be fyled *de bene esse*.

VIII

That every defendant, who shall, in any suit, be arrested, upon any process *ad respondendum*, shall and may, at the return day of such process, or on, or

48 OF APPEAR. DEFT. & BAIL. Sect. 5.

before the *tertius dies post*, appear in person or by Attorney, in manner herein before directed ; and in default thereof, the plaintiff or plaintiffs, in such suit, shall and may proceed therein, against such defendant by default *ex parte*, in like manner, in all things, as such plaintiff or plaintiffs would have proceeded if such suit had been instituted by the ordinary process *ad respondendum*, and such defendant had not appeared : it being provided that no such proceedings by default *ex parte* shall affect, in any manner or way whatever, the right of such plaintiff or plaintiffs to an assignment of the Bail Bond taken by the Sheriff in such suit, or his, her, or their right to compel the entry of special Bail, or to compel the Sheriff to bring in the body, or any right of action upon the Bail Bond or otherwise against the Bail taken by the Sheriff, or against any special Bail, in such suit, or any measures, steps, means, or proceedings which such plaintiff or plaintiffs legally may have, or pursue for any, or either of the said purposes, in any, or either of the cases aforesaid.

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IX.

That in every suit, in which special bail, or bail to the action, is required, the same shall be put in, in open Court, on or before the *tertius dies post*, after previous notice of one day at least to the plaintiff or plaintiffs in such suit; and such bail, upon motion on the part of the plaintiff or plaintiffs in such suit, or of any or either of them to that effect, shall justify, or refusing to justify shall not be received or admitted, as bail as aforesaid.

X.

That every notice, acknowledgment, and justification of Special Bail, shall be in the forms prescribed for such notices, acknowledgments, and justifications, severally, and respectively, in the Appendix to these rules and orders, under the numbers XV. XVI. XVII.

XI.

That in all suits, in which bail to the Sheriff shall be taken, the Sheriff upon the first Juridical day in term next, after the *tertius dies post*, shall bring into

50 OF APPEAR. DEFT. & BAIL Sect. 5.

Court the Bail Bond by him taken, and in open Court shall assign the same to the plaintiff or plaintiffs in such suit, if he, she, or they shall be satisfied with the Bail so taken ; and thereupon, being willing to accept of such assignment shall move therefor ; and if such plaintiff or plaintiffs, in such suit, shall not be satisfied with the Bail so taken by the Sheriff, and shall therefore be unwilling to accept an assignment of the Bail Bond so taken, such plaintiff or plaintiffs, from and after the *tertius dies post*, shall and may proceed against the Sheriff, upon his return of *cepi corpus*, to compel him to bring in the Body, by attachment, or by amerciaments for contempt, in case of disobedience, in manner herein after directed.

XII.

That in all suits, in which the plaintiff, or plaintiffs, to compel the Sheriff to bring in the Body, shall see fit to proceed by amerciaments, and legally may he, she, or they shall make and fyle a motion to that effect, in open Court ; and if such motion shall be granted, and

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OF APPEAR. DEFT. & BAIL. Sect 5. 51

after service of office copy of the rule, which shall be made thereon, upon the Sheriff, at any time before the hour of ~~nine~~ in the evening of the day of the date of such rule, the Sheriff shall not, with-^{eight}in three days, bring in the Body, according to the exigency of such rule, and special Bail shall not then be put in, he shall be amerced in the sum of forty shillings, and so on, repeteadly by amerciaments increased at discretion, until the plaintiff's demand shall be satisfied, or the Body brought in.

XIII.

That all amerciaments shall be levied by Seisure and Sale of the goods and chattels of the Sheriff amerced, by writ of execution against the moveable and personal property of such Sheriff; and, in default of goods and chattels, by attachment against his person; and shall be paid, by the Coroner, by whom the same shall be received, unto the plaintiff or plaintiffs, upon whose proceedings they shall be levied, upon motion for that purpose, and not otherwise.

XIV.

That in all suits, in which the plaintiff, or plaintiffs, to compel the Sheriff to bring in the Body, shall see fit to proceed by attachment, and legally may, he, she, or they shall make and fyle a motion to that effect, in open Court; and if such motion shall be granted, and after service of an office copy of the rule, which shall be made thereon, upon the Sheriff personally, at any time before the hour of ~~nine~~ in the evening of the day of the date of such rule, the Sheriff shall not within six days bring in the Body, and shall not show good cause to the contrary, according to the exigency of such rule, and special Bail shall not then be put in, an attachment shall issue against him.

XV.

That a writ of attachment, for contempt, shall be in the form prescribed for such writ, in the appendix to these rules and orders, under the number XVIII.

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rested, upon any writ of *capias ad res-pondendum*, by himself, or by his Bail, in discharge of Bail to the Sheriff, shall be valid or effectual, or allowed as such, unless such render shall be made, in open Court, during term, or to the Sheriff, before some one of the Justices of this Court, at Chambers, in vacation, nor unless the Court, or such Justice, before whom such render shall be made, shall have made an entry or minute of such render, and shall have committed such defendant thereupon to the custody of the said Sheriff of the District of Quebec, in discharge of such Bail; and in every case of render in discharge of Bail to the Sheriff, made before any Justice of this Court, the minute of such render shall forthwith, by such Justice, be returned into the office of the Prothonotary, and be there fyled of record in the suit to which such minute shall relate, and a duplicate thereof in all things shall, by such Justice, be delivered with such defendant to the said Sheriff.

XVII.

That every minute of render, in dis-

34 OF APPEAR. DEFT. & BAIL. Sect. 5.

charge of bail to the Sheriff, or in discharge of special bail, before any justice of this Court, in vacation, and of commitment thereupon to the custody of the Sheriff of the District of Quebec, shall be in the form prescribed, in the Appendix to these rules and orders, under the number XIX, and in no other.

XVIII.

That, untill the expiration of fifteen days from the day on which final judgment shall be obtained in any suit, the assignment of the Bail Bond, upon motion for that purpose made, as herein before directed, the bringing in of the body upon the Original, or any subsequent motion for that purpose according to the exigency of the rule thereon, the render in discharge of Bail to the Sheriff, in the manner herein before directed, the putting in of special Bail upon or before the *tertius dies post*, in the manner herein before directed, or by leave of the Court, at any other time whatever, before final judgment (such leave being granted upon motion for that purpose by consent or otherwise)

OF EXHIBIS. AND OF COM. Sect. 6. 55

the payment of the real debt and costs by the Sheriff, by the defendant, or by any other person, and any and either of the same, shall stay all further proceedings whatsoever in such suit against the Sheriff to compel him to bring in the Body, and shall supersede the attachment, if any attachment shall have issued.

SECTION 6th.

OF EXHIBITS AND OF COMMUNICATION.

IT IS ORDERED,

I.

That of each, and every, paper writing, other than public acts, particularly mentioned, and set forth, in the declaration, or in any subsequent pleadings, in any case fyled as the act, instrument, deed or writing upon which such declaration, or subsequent pleading shall be founded respectively, authenticated copies (if such paper writings be *actes authentiques*) and a copy certified by the Attorney of the party fyling the same (if such paper writing be *acte sous sein/privé*) shall, within

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56 OF EXHIBITS . AND OF COM. Sect 6.

lists or inventories thereof, be exhibited and fyled, in the office of the Prothonotary, together with such declaration and pleading respectively ; and that all other paper writings, or *preuve littérale* whatsoever, which the party or parties to any suit, or any or either of them shall see fit to produce in evidence, together with the originals of all *actes sous seing privé*, which shall be exhibited and fyled, as herein before directed, shall be exhibited and fyled, with lists or ~~the~~ Inventories thereof, at the opening of enquete which shall be had upon the issue raised in such suit (if any there be) to which such last mentioned paper writings, or *preuve littérale* shall relate, as evidence, and not before.

I I.

That every list, or inventory, of exhibits, shall be an Index to all, each and every the exhibits therewith fyled, by number, title, date, and description, under the signature of the Attorney *ad litem* fying such exhibits ; and each and every exhibit which, in any case, shall not be inserted and mentioned, as herein directed, in the list or inventory

OF EXHIBITS AND OF COM. Sect. 6. 57

of exhibits therein fyled, shall not be received, or fyled, or be deemed, or taken, to be fyled, or be held, or taken, to be part of the record in such case.

III.

That each and every party to a suit, fyling a copy of any *acte sous seing privé*, shall be thereby bound, and shall not, at the *enquête*, upon the issue raised in such case, to which such *acte sous seing privé* shall relate (if any there be), nor at the hearing of such issue, be permitted to produce in evidence, or to fyle any original paper writing whatsoever, which does not in all things correspond with such copy.

IV.

That in each, and every case, in which a copy of any paper writing particularly mentioned and set forth in the declaration, *demande* in chief, or in any incidental or cross *demande*, or in any *demande* in intervention, as the act, instrument, deed or writing upon which such *demandes* respectively shall be founded shall not be fyled, as herein

58 OF EXHIBITS AND OF COM. Sect 6.

before directed, the party or parties in such case, who would otherwise be bound to plead to such declaration or *demande* in chief, incidental, cross *demande*, or *demande* in intervention, as the case may be, shall not be compelled to plead thereto, until such copy of such paper writing shall be fyled; and the rules to plead, in such case, shall commence and be reckoned from the day on which such copy of such paper writing shall be fyled.

V.

That in each, and every case, in which a copy of any paper writing particularly mentioned and set forth in any plea of exception *déclinatoire*, *peremptoire à la forme*, *dilatoire*, or *peremptoire en droit*, temporary or perpetual, as the act, instrument, deed, or writing, upon which such exceptions respectively, shall be founded, shall not be fyled, as herein before directed, such plea of exception, upon motion of the party or parties, who would otherwise be bound to answer to such plea of exception, shall be over ruled and dismissed with costs.

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VI.

That in each, and every case, in which a copy of any paper writing particularly mentioned and set forth in any answer to any plea of exception *déclinatoire, péremptoire à la forme, dilatoire, or péremptoire en droit*, temporary or perpetual, as the act, instrument, deed, or writing upon which such answer shall be founded, shall not be fyled, as herein before directed, the party or parties in such case, who would otherwise be bound to reply to such answer, shall not be compelled to reply thereto, until such copy of such paper writing shall be fyled; and the rule to reply, in such case, shall commence and be reckoned from the day on which such copy of such paper writing shall be fyled.

VII.

That in every case, in which the declaration or *demande* of any plaintiff in chief, or of any incidental plaintiff, or plaintiff in intervention, shall not disclose the particulars of such *demande*, the defendant shall be at liberty and en-

60 OF EXHIBITS AND OF COM. Sect. 6.

titled by motion, if he see fit so to do, IN TERM, and by summons before one of the Justices of this Court IN VACATION, to require and to obtain of the plaintiff, in writing, the particulars of the demande for which his action, cross action, or action in intervention, as the case may be, shall be brought; unless good cause be shown to the contrary; and every order to furnish the particulars of any such *demande* which shall be made IN TERM, or IN VACATION, shall operate as a stay of all proceedings upon such demande, until such particulars shall be furnished in writing; it being hereby provided that no such motion, or summons, shall be allowed after the expiration of the first Juridical day next after the day upon which such defendant in any action in chief shall have appeared, nor after the expiration of the first Juridical day next after the day upon which such incidental cross *demande*, *demande* in intervention respectively shall be fyled: and further that no exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, on the part of the party or parties making such motion, or requiring

OF EXHIBITS AND OF COM. Sect. 6. 61

such summons, shall be received or fyled.

VIII.

That all parties to a suit, pending in this Court, shall of common right, and without any motion, or other application to the Court for that purpose, be entitled to communication of all exhibits and other paper writings fyled in such suit, in the manner herein after directed.

IX.

That of all exhibits, or other paper writings, fyled in any case, being copies or expeditions of *actes authentiques*, or copies of *actes sous seing privé*, communication shall be given, upon the receipt of the Attorney of the party, or parties, in such case, indorsed upon the list or inventory of such exhibits; and such Attorney shall be entitled to have and retain such copies in communication, at his office, for and during the space of forty eight hours.

X.

That of all exhibits, or other paper writings, fyled in any case, being *actes sous seing privé*, or original paper writ-

62 OF EXHIBITS AND OF COM. Sect. 6.

ings of any description whatsoever, communication shall be given to the Attorney of the party or parties demanding and entitled to communication in such case, at the office of the Prothonotary of this Court and not else where; it being expressly provided that no exhibits or other paper writings being *actes sous seing privé*, or original paper writings of any description whatsoever, shall be removed, or taken in communication, from the office of the Prothonotary, for any cause or pretence whatsoever.

XI.

That, after the expiration of a year and a day, from the day of the date of the final judgment, in any case, in which no appeal shall have been, or may be instituted, all exhibits, therein fyled, shall and may be withdrawn by the party or parties, by whom the same have been fyled, such party or parties endorsing therefor a receipt to the Prothonotary of this Court, upon the list or inventory of exhibits, in such case, fyled, in which the exhibits so withdrawn shall be enumerated and described.

XII.

That no exhibit which now is, or hereafter shall be fyled in any case, shall in term, be withdrawn, pending such case, or within a year and a day from the day of the date of the final judgment in such case, from the record of such case, without the order of this Court upon motion, with previous notice of such motion, by the space of two days, to the adverse party, or parties, therein interested duely served ; and in all cases, in which such application shall be granted, such exhibits or other paper writing shall not be withdrawn, until a true copy thereof, duly authenticated by the Prothonotary of this Court, shall have been made and fyled of record, in such case, in lieu of such exhibit, or other paper writing by the Court allowed to be withdrawn.

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XIII.

That no exhibit, or other paper writing, which now is, or hereafter shall be fyled, shall, in any case, within a year and a day from the day of the date of the final judgment, in such case, be with-

drawn from the record of such case, without the order of one of the Justices of this Court, upon written application for that purpose, with previous notice of such application, by the space of two days, to the adverse party or parties therein interested, duely served ; and in all cases, in which, such application shall be granted, such exhibit or other paper writing shall not be withdrawn, until a true copy thereof, duely authenticated by the Prothonotary of this court, shall have been made and fyled of record, in such case, in lieu and stead of such exhibit or other paper writing by such justice allowed to be withdrawn.

SECTION 7th.

OF PLEADING.

IT IS ORDERED,

I.

That, in every case, all pleadings, subsequent to the declaration in chief, be fyled, in the office of the Prothonotary, by the party or parties pleading the same respectively.

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I I.

That copies of every pleading, which shall be fyled, in the office of the Prothonotary, in any case, by any party plaintiff or defendant, shall be served, upon the Attorney and Attornies of the adverse party or parties, in such case, if such there be, at or before the hour of six in the evening of the day, on which such pleading shall be fyled; and, in default of such service, the fyling of such pleading shall not be held or taken to be perfected, and such adverse party or parties, in such case, who shall not have been so served with a copy of such pleading, shall and may proceed, in all things, as if such pleading had never been fyled.

I I I.

That, upon every copy of any pleading fyled, in the office of the Prothonotary, which shall be served upon the Attorney or Attornies of any party or parties plaintiff or defendant, in any case, there shall be endorsed a notice of the time of fyling thereof, and of the

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rule to plead, to answer or to reply, as the case may be, in the form prescribed, in the appendix to these rules and orders, under the number XX.

IV.

That the parties to any suit, depending in this court, shall be bound and held, without any motion, or other application for that purpose, to fyle their several and respective pleadings, in the manner directed, and within the time appointed and limited by these rules and orders, for the fyling of such pleading respectively; and that no motion for rule to fyle any pleading, in any case, shall be received or fyled.

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V.

That the pleadings, in each case, shall be fyled at, or before, the hour of six in the evening of the day upon which by the rules and orders of this Court it is required that such pleadings respectively should be fyled; those cases only excepted, in which the common rule or order of this Court, with respect to the fyling of any pleading, shall be enlarged, and in all such cases, such pleadings

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shall be fyled at, or before, the hour of six in the evening of the day upon which such rule or order so enlarged shall expire, *as the case shall require*, // *for*

VI.

That, except as herein after is excepted, the rules and orders of this Court, for the fyling of pleadings, shall not, in any case, be enlarged, IN TERM, without the special order of the Court, upon motion for that purpose made, in open Court, nor, IN VACATION, without the order of one or more of the Justices of this Court, upon petition for that purpose presented to such Justice or Justices out of Court, and every such motion and petition shall respectively be made or presented at some time before the common and ordinary rule hereby prescribed to plead, to answer, to reply, or otherwise (as the case may be) shall expire, and shall be supported by an affidavit of the fact or facts upon which it is grounded with proof of previous notice of such motion or petition to be duly served, by the space of one day at

least, upon the Attorney or Attornies of the party or parties who, in the suit in which such motion shall be made or petition presented, shall happen to be the opponent or opponents of the party or parties making such motion or presenting such petition.

VII.

That all exceptions *déclinatoires, péremptoires à la forme*, and *dilatoires*, to be pleaded, in each case respectively, be pleaded conjointly, and be fyled at one and the same time, ~~at, or before the hour of six in the evening of~~ the first day next, after the day on which the appearance of the defendant or defendants, by whom such exceptions as aforesaid are pleaded, shall be fyled; that no such exception shall afterwards be received or fyled, and that the period, allowed by these rules and orders for fyling such exceptions, shall not, in any case, be enlarged.

VIII.

That all exceptions *péremptoires en droit* and all *défenses au fonds* to be pleaded, in each case, respectively, be

pleaded conjointly and be fyled at one and the same time, ~~at, or before the hour of six in the evening of~~ the sixth day next after the return day of the process *ad respondendum*, in every suit in which the process *ad respondendum* shall be returnable on the first day in term, and of the twentieth day from such return day, in every suit in which the process *ad respondendum* shall be returnable upon the second day, in term, or upon any day, in term, thereafter; and that the rule hereby prescribed shall be the common rule to plead to the merits of the action, in each case respectively.

IX.

That in all cases, in which any exceptions *déclinatoires*, *dilatatoires*, or *péremptoires à la forme* shall be fyled and shall not be heard and determined, or otherwise disposed of, before the day on which the common rule to plead, in such case to ~~the merits of~~ the action, shall expire, such common rule, to plead to ~~the merits of~~ the action, shall, *ipso facto*, stand enlarged until the first day next after the day on which such exceptions *déclinatoires*, *dilatatoires*, or

péremptoires à la forme shall have been so heard and determined, or otherwise disposed of.

X.

That no plea of exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire* be received or fyled, unless the party offering such plea shall therewith deposit, in the hands of the Prothonotary, the sum of two pounds six shilling and eight pence, for each and every such plea, to answer the costs of the respondent or respondents upon such plea, if the same shall be dismissed by the Court, or withdrawn by such party, in the proportion of eleven shillings and eight pence to the Prothonotary, and one pound fifteen shillings to such respondent or respondents.

XI.

That all *preuve littéraire*, of whatever description, to be adduced, in support of any exception *déclinatoire*, *dilatoire*, or *péremptoire à la forme*, be fyled together with such exception *déclinatoire*, *dilatoire*, or *péremptoire à la forme*, as the case may be; and that no *preuve*

littérale, in supporte of such exceptions, be afterwards, at any time, received or filed. / 8

XII.

That all exceptions *déclinatoires*, *péremptoires à la forme*, and *dilatoires*, be set forth in pleading distinctly and consecutively, in the following order, that is to say,

Ist. EXCEPTIONS DECLINATOIRES,

(1.) For cause of *incompetence* in the Court.

(2.) By reason of *privilege* in the defendant.

II d. EXCEPTIONS PEREMPTOIRES A LA FORME,

(1.) For cause of nullity in the declaration.

(2.) For cause of nullity in the process *ad respondendum*.

(3.) For cause of nullity in the service of the declaration, and process *ad respondendum*, or either of them.

III d. EXCEPTIONS DILATOIRES,

(1.) For cause proceeding from

the plaintiff.

(2.) For cause proceeding from the defendant.

(3.) For cause proceeding from the action.

XIII.

That all answers to exceptions *déclinatoires*, *péremptoires à la forme*, or *dilatoires*, to be pleaded, in each case respectively, be pleaded conjointly, and be fyled, at one and the same time, ~~at or before, the hour of six in the evening~~ of the third day next after the day, on which such exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatoires* respectively, shall be fyled.

XIV.

That all replications to answers to exceptions *declinatoires*, *peremptoires à la forme*, or *dilatoires*, to be pleaded, in each case respectively, be pleaded conjointly and be fyled, at one and the same time, ~~at or before, the hour of six in the evening of~~ the second day next after the day on which such answers to exceptions *declinatoires*, *peremptoires à la forme* or *dilatoires* respectively, shall be fyled.

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XV.

That each and every exception *déclinatoire*, *péremptoire à la forme*, and *dilatoire* shall be considered and be heard, as an application to the Court by petition to stay or to set aside proceedings for irregularity, and shall require no answer, or issue to be thereupon taken, in any case, in which the plaintiff or plaintiffs shall see fit to abide by the hearing of such exception upon its own merits, and shall therefore move for hearing thereon, without an answer; it being hereby provided that every plaintiff, who shall so move for hearing, without answer upon any plea of exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire*, shall be held and taken thereby to confess and admit the allegations of fact set forth and contained in such plea of exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire*, and each and every of them, to be true.

XVI.

That in every case, in which the plaintiff or plaintiffs shall not see fit to move for hearing, without answer upon

any plea of exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire*, the answer of such plaintiff or plaintiffs to such exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire*, shall be fyled, as herein before is directed ; and if such plaintiff or plaintiffs shall not see fit to fyle any special answer to such exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire*, the answer of such plaintiff or plaintiffs thereto shall be general, and in the form prescribed, in the Appendix to these rules and orders, under the number XXI, by which general answer the issue upon such exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire* shall be completed and perfected.

XVII.

That a replication, to the general answer to any plea of exception *déclinatoire*, *péremptoire à la forme*, or *dilatoire*, shall not be received or fyled, and that every answer which shall not be in the form prescribed, in the Appendix to these rules and orders, under the said number XXI, shall be deemed and taken to be a special answer.

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XVIII.

That in every case, in which a special answer to any plea of exception *déclinatoire*, *péremptoire à la forme*, or *dilatatoire* shall be filed, a replication to such special answer shall and may be received and filed.

XIX.

That all exceptions *péremptoires en droit*, and all *défenses au fonds*, be deemed and taken to be pleas to the action, and be set forth in pleading distinctly and consecutively, in the following order, that is to say,

Ist. EXCEPTIONS PEREMPTOIRES EN DROIT, which are TEMPORARY.

IId. EXCEPTIONS PEREMPTOIRES EN DROIT, which are PERPETUAL.

IIId. DEFENSES AU FONDS.

(1.) *En droit*,

(2.) *En fait*.

XX.

That all answers to exceptions *péremptoires en droit*, temporary or perpetual, to be pleaded, in each case res-

pectively, be pleaded conjointly, and be fyled at one and the same time, on the third day next after the day on which such exceptions *péremptoires en droit*, temporary or perpetual, shall respectively be fyled.

XXI.

That in every case, in which the plaintiff or plaintiffs shall not see fit to fyle a special answer to any exceptions *péremptoires en droit*, temporary or perpetual, the answer of such plaintiff or plaintiffs thereto shall and may be general, and in the form prescribed, in the appendix to these rules and orders, under the number XXI; and by such general answer, the issue upon such exceptions *péremptoires en droit*, temporary or perpetual, shall respectively be completed and perfected; it being hereby provided that every answer, which shall not be in the form prescribed, in the appendix to these rules and orders, under the said number XXI, shall be deemed and taken to be a special answer.

XXII.

That a replication to the general an-

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swer to any exception *peremptoire en droit*, temporary or perpetual, shall not be received or fyled; but that, in every case, in which a special answer to any such exception shall be fyled, a replication thereto shall and may be received and fyled.

XXIII.

That all replications to special answers to exceptions *peremptoires en droit*, temporary or perpetual, to be pleaded, in each case respectively, be pleaded conjointly, and be fyled, at one and the same time, ~~at, or before, the hour of six in the evening of the second day next~~ after the day on which such answers to exceptions *peremptoires en droit*, temporary or perpetual, shall respectively be fyled. */B on*

XXIV.

That a replication to *defenses au fonds* shall, in all cases, be fyled; and that all replications to *defenses au fonds* to be pleaded, in each case respectively, be pleaded conjointly, and be fyled, at one and the same time, ~~at, or before, the hour of six in the evening of the~~ second day next after the day upon */B on*

which such *defenses au fonds* shall respectively be fyled.

XXV.

That no exception *declinatoire*, *peremptoire à la forme*, *dilatatoire*, or temporary *peremptoire en droit* shall be amended; nor shall any motion for any such purpose be received or fyled.

XXVI.

That no declaration, perpetual *exception en droit*, *defense*, answer, replication, or other pleading, of whatsoever description, shall be amended, without leave of the Court and payment of costs; and, in all cases, in which any declaration, perpetual *exception en droit*, *defense*, answer, or other pleading shall be so amended, the party bound to plead, to answer, or to reply thereto, shall have the like time so to plead, to answer, or to reply to such declaration, perpetual *exception en droit*, *defense*, answer, or other pleading so amended, as therefore was originally allowed by these rules and orders; and such time shall be computed from the day on which such declaration, perpetual ex-

ception
plead.

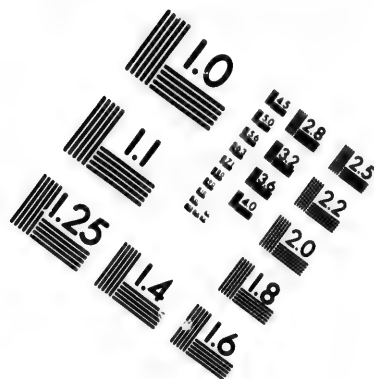
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XXVII.

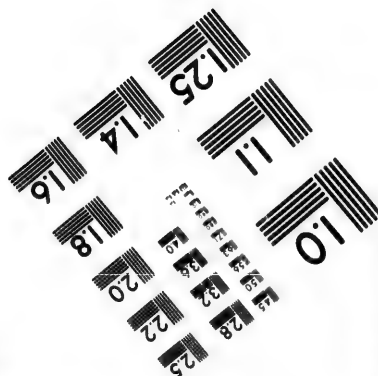
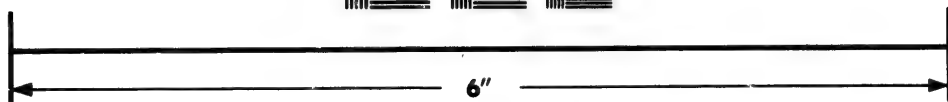
That, in every case, in which the common or enlarged rule to plead to the ~~merits of the action~~ shall expire, ^{IN} TERM, and the defendant or defendants, in such case, shall file, in the office of the Prothonotary, ~~a plea to the merits of the action~~, on or before the hour of six in the evening of the day on which such common or enlarged rule to plead shall expire, the plaintiff or plaintiffs, upon filing a certificate of the Prothonotary, that no plea hath been filed in the form prescribed, in the appendix to these rules and orders, under the number XXII, and upon motion thereupon made in open Court, shall have leave to proceed, and shall and may proceed against such defendant or defendants *ex parte*, for want of a plea, in like manner, in every respect, as if such defendant or defendants had never appeared: those cases excepted, in which at the time of making such motion, sufficient cause against the granting thereof shall be shown.





Resolution Test Chart Labels:

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XXVIII.

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That, in every case, in which the common, or enlarged rule, to plead ~~to the merits of~~ the action shall expire, ~~IN VACATION~~, and the defendant or defendants, in such case, shall not fyle, in the office of the Prothonotary, a plea ~~to the merits of~~ the action, at, or before, the hour of four in the evening of the day on which such common, or enlarged rule to plead, shall expire, in which also the plaintiff or plaintiffs, after the expiration of such common or enlarged rule to plead, shall have demanded, in writing of such defendant or defendants, a plea ~~to the merits of~~ the action, in the form prescribed, in the appendix to these rules and orders, under the number XXVII, and a plea or pleas, ~~to the merits of~~ the action, shall not be fyled, in the office of the Prothonotary, at, or before, the hour of four in the evening of the day next after the day on which such demand of a plea, ~~to the merits of~~ the action, shall be so made, the plaintiff or plaintiffs, in such case, making such demand, shall be entitled and at liberty to foreclose the defendant or

defendants, upon whom, such demand of a plea to ~~the merits of~~ the action shall have been so made, from the right of fyling a plea or pleas to ~~the merits of~~ the action, in such case, by fyling, in the office of the Prothonotary, a copy of such demand of a plea to ~~the merits of~~ the action, with a Bailiff's certificate of due service of such demand upon the Attorney *ad litem* of such defendant or defendants, if such there be, or at the elected domicile of such defendant or defendants, if no appearance by Attorney shall have been entered, with an acte of foreclosure in the form prescribed, in the appendix to these rules and orders, under the number xxiv : and after the fyling of such copy of a demand of a plea to ~~the merits of~~ the action, with such certificate of service, and such acte of foreclosure, as aforesaid, no plea to ~~the merits of~~ the action, on the part of such defendant or defendants, shall afterwards be received or fyled, without the special order of the Court for that purpose, and thereupon, such plaintiff or plaintiffs shall be entitled

and at liberty to proceed, and shall and may proceed against such defendant or defendants *ex parte*, for want of a plea, in like manner, in every respect, as if such defendant or defendants had never appeared.

XXIX.

That in every case, in which a replication to any special answer filed by the plaintiff or plaintiffs, in such case, to any exceptions *déclinatoires*, *péremptaires à la forme*, *dilatoires*, or *péremptaires en droit*, temporary or perpetual, in such case pleaded, shall not be filed by the excipient or excipients, in such case, at the expiration of the rule and time thereby given in such case to reply; the plaintiff or plaintiffs, in such case, shall forthwith thereafter be entitled, and at liberty, to make and file, for and on the behalf of such excipient or excipients, a general replication to such special answer, in the form proscribed, in the appendix to these rules and orders, under the number xxv; and having served a copy of such general replication on such excipient or excipients, with notice of the filing thereof, having

and

also filed in the office of the Prothonotary due proof of the service of such copy, and of such notice, thereupon to proceed in all things and in every respect as if such replication had been filed by such excipient or excipients: it being hereby provided, that, in every such case, the excipient or excipients therein shall be entitled, and at liberty, to withdraw such general replication, so filed by such plaintiff or plaintiffs, at any time before the hour of four in the afternoon of the second day next after the day on which such general replication shall be filed, and at all times thereafter, until such plaintiff or plaintiffs shall have proceeded thereupon, and to substitute in lieu thereof, such replication, as he, she or they may see fit to abide by, without delay to the cause, or otherwise howsoever,

XXX.

That every defendant, who, in any action, shall be arrested upon a *capias ad respondendum*, shall plead and reply, within the periods, and in the manner herein before respectively limited and

directed, for the fying and service of pleadings subsequent to the declaration; and in default thereof, the plaintiff or plaintiffs, in such action, shall be entitled, and at liberty to proceed, in all things, against such defendant, as if such action had been instituted by writ of summons.

XXXI.

That every declaration, as well in the caption, as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders, under the number xxvi; and that a declaration, in any other form, shall not be received or fyled.

XXXII.

That every exception *déclinatoire*, as well in the caption, as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders, under the number xxvii; and that an exception *déclinatoire*, in any other form, shall not be received or fyled.

XXXIII.

That every exception *péremptoire à la forme*, as well in the caption, as in the conclusion thereof, be in the form

respectively

prescribed, in the appendix to these rules and orders, under the number **xxviii** ; and that an exception *péremptoire à la forme* in any other form shall not be received or fyled.

XXXIV.

That every temporary exception *péremptoire en droit*, as well in the caption, as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders, under the number **xxix** ; and that a temporary exception *péremptoire en droit*, in any other form, be not received or fyled.

XXXV.

That every perpetual exception *péremptoire en droit*, as well in the caption, as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders, under the number **xxx** ; and that a perpetual exception *péremptoire en droit*, in any other form, be not received or fyled.

XXXVI.

That every *defense au fonds*, as well in the caption, as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders,

under the number XXXI; and that a *defense au fonds*, in any other form, be not received or fyled.

XXXVII.

That every incidental cross *demande*, as well in the caption as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders, under the number XXXII. and that an incidental cross *demande* in any other form shall not be received or fyled.

XXXVIII.

That all incidental cross *demandes*, made on the part of the defendant or defendants, in any case, be conjointly made, and be fyled, at one and the same time, with the plea or pleas of such defendant or defendants to ~~the merits~~ of the action; and that no incidental cross-*demande* of any such defendant or defendants, in such case, be afterwards received or fyled.

XXXIX.

That every incidental cross-*demande* shall be deemed and taken to be a distinct action, and shall not be permitted, in any respect, to delay the proceedings

of the plaintiff or plaintiffs, in any case, in which any such incidental cross-*demande* shall be instituted ; it being nevertheless hereby provided, that nothing in this rule shall extend, or be construed to extend, to any matter of *reconvention*, or *compensation* which shall amount to, and be pleaded, as a *defense* to the *demande* in chief.

XL.

That every *demande* in intervention, as well in the caption as in the conclusion thereof, be in the form prescribed, in the appendix to these rules and orders, under the number xxxiii. and that a *demande* in intervention in any other form shall not be received or fyled.

XLI.

That no *demande* in intervention shall in any cause be received, without a motion for leave to fyle the same, or be fyled without the order of the Court for that purpose, and that no such motion shall be received or fyled, unless the same, be accompanied with an affidavit or certificate of previous service of a copy of such *demande* upon the several parties in such cause, who shall have

appeared.

XLII.

That in every case, in which any *demande* in intervention shall not be fyled, by consent, upon the motion for leave to fyle the same, the rule upon such motion shall be a rule *nisi* of one day, and shall be served on all the parties in such cause who shall have appeared.

XLIII.

That the rules and orders, hereby prescribed, with respect to pleadings upon *demandes* in chief, and each and every of them, shall, in all things, apply to, and be, the rules and orders of this Court, with respect to all pleadings upon incidental cross *demandes*, upon which pleadings are by law required.

XLIV.

That the rule to plead to any *demande* in intervention shall commence and be reckoned from the day on which by the order of the Court such *demande* in intervention shall be fyled.

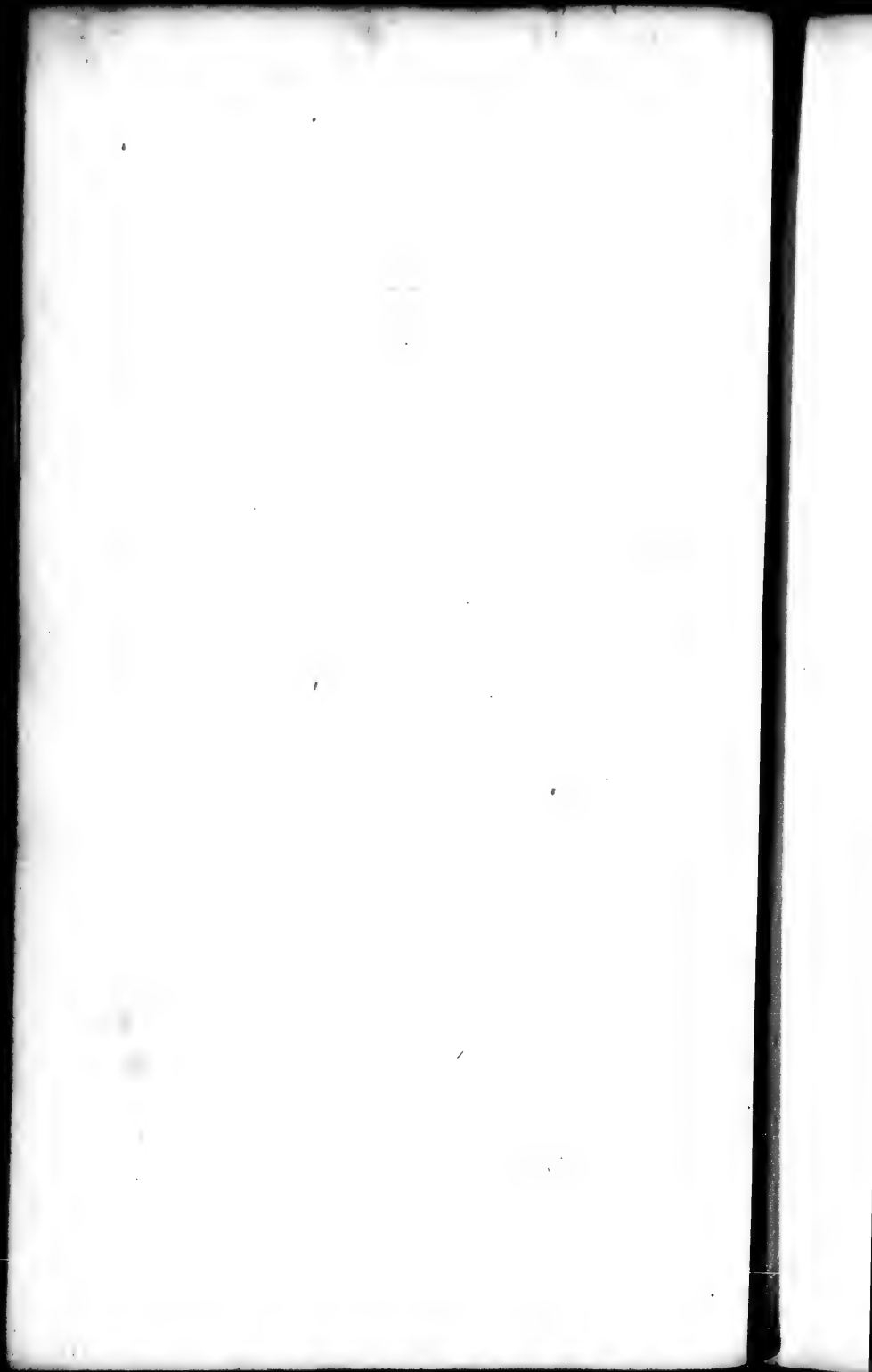
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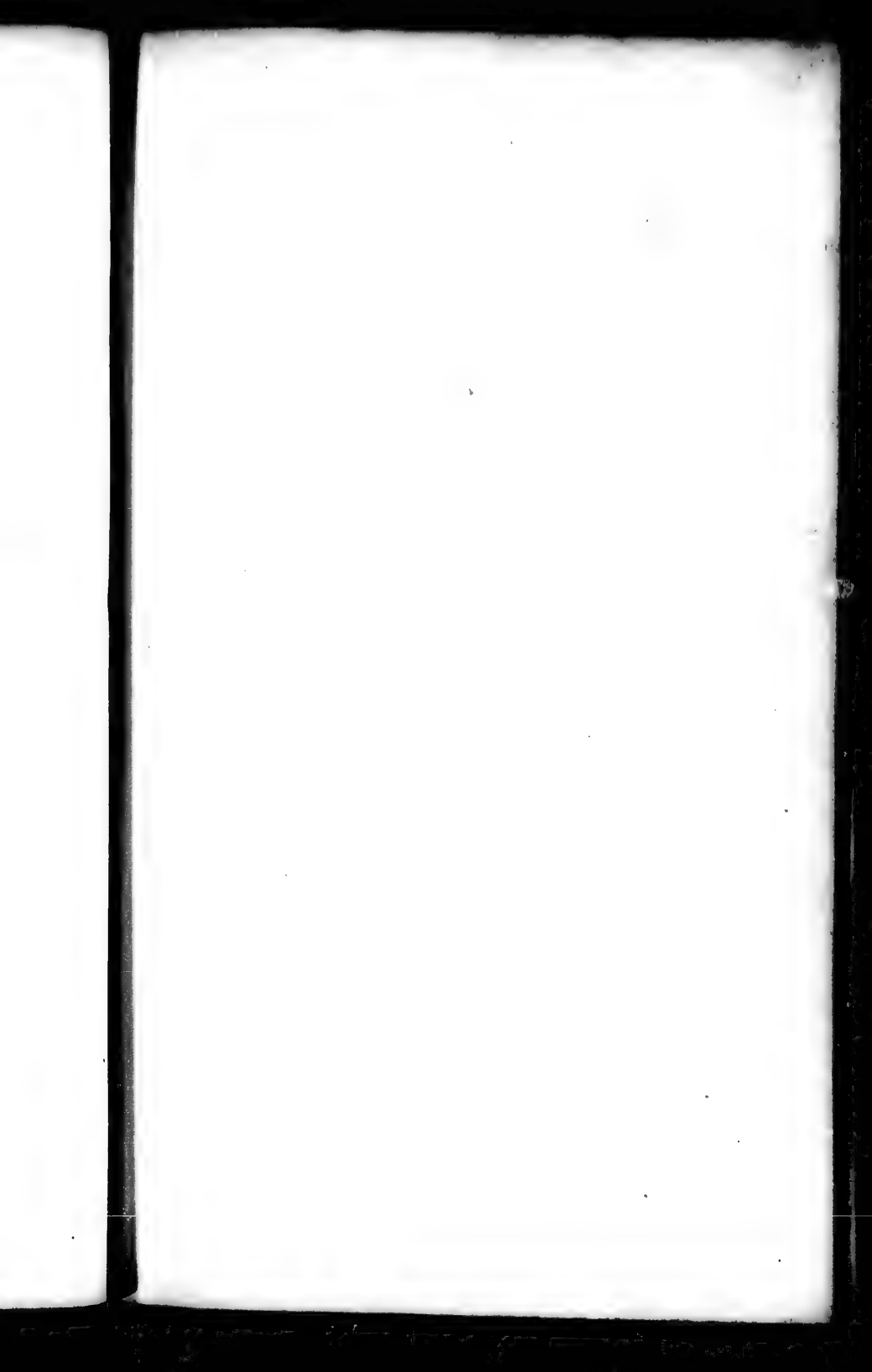
That, in every case, Evoked from the inferior term of this Court, the plaintiff or plaintiffs, in such case,

Rem. à la page 80. le deui de
la demande d'un Plea doit être fait
avant huit heures du soir.

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Sous la règle 27. p. 79. la Cour a décidé
que la demande de plaidoyer pouvait
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within three days from the day on which the evocation, in such case, shall be allowed, shall file, in the office of the Prothonotary, his declaration, in such case, in the form prescribed, in the appendix to these rules and orders, under the number XXXIV : and that the rules and orders of this Court, with respect to pleadings upon *demandes* in chief, in actions instituted by process *ad respondendum* returnable in the Superior term of this Court, and each and every of them, shall, in all things, apply to, and be, the rules and orders of this Court, with respect to all subsequent pleadings, in such case.

SECTION 8.

OF ISSUES, OF ENQUETES, AND OF
HEARINGS.

IT IS ORDERED,

I.

That the Issue upon a *demande* in chief, upon an incidental-cross *deman-*

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90 OF ISSUES, ENQ. & HEAR. Sect. 3.

de, and upon a *demande* in Intervention respectively, shall be perfected by the declaration, *défense au fonds*, and replication.

I I.

That the Issue upon an exception *déclinatoire*, *péremptoire à la forme*, and *dilatoire* respectively, in every case, in which a motion for hearing, without answer, shall not be made, shall be perfected by the exception and answer, if the answer be general ; and by the exception, answer, and replication, if the answer be special.

III.

That the Issue upon an exception *péremptoire en droit*, temporary or perpetual, shall, in every case, be perfected by the exception and answer, if the answer be general ; and by the exception, answer, and replication, if the answer be special.

IV.

That there be kept in the office of the Prothonotary two Rolls, to be called respectively the Roll *de droit*, and the Roll *d'Enquêtes* : that upon the

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Roll *de droit* shall be inscribed all causes which, by the course of the Court, shall stand for hearing *en droit* upon the pleadings in such cause fyled, upon the merits, or other matter; and upon the Roll *des Enquêtes* all causes which, by the course of the Court, shall stand for the adduction of proof.

V.

That all causes, which shall be regularly inscribed upon the Roll *de droit*, for hearing *en droit* upon the pleadings fyled in such cause, or for hearing *en droit* upon the merits, or other matter, and each of them, shall, from thence forth, be and remain set down for hearing upon the matter to which the inscription of such cause upon the Roll *de droit* shall relate, until the same shall be heard, or such cause, in such respect, shall be otherwise disposed of by the order of the Court.

VI.

That all causes, which shall be regularly inscribed upon the Roll *des Enquêtes*, and each of them, shall, from

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thence forth, be and remain set down for the Enquête to which the inscription of such cause upon such Roll shall relate, until such Enquête shall be had, or such cause, in this respect, shall otherwise be disposed of by order of the Court.

VII.

That all cases, which shall be regularly inscribed upon the Roll *de droit*, for hearing *en droit* on the pleadings, on the merits, or other matter, upon any particular day, shall be first called on, and heard upon such day, or as soon thereafter as counsel can be heard, in the order and succession in which such cases shall stand inscribed upon such Roll; and such cases so set down for hearing being first heard, the cases inscribed for hearing generally *en droit* on the pleadings, on the merits, or other matter upon such Roll, shall upon such day, or as soon as counsel can be heard, be called on and heard, in the order and succession in which such last mentioned cases shall stand inscribed upon such Roll.

VIII.

That all cases, which shall be regularly inscribed upon the roll *des enquêtes* for the adduction of proof, upon any particular day, shall upon such day be first called on, in the order and succession in which such cases shall stand inscribed upon such roll; and the *enquêtes* in such cases being closed, or such cases being otherwise disposed of, the cases inscribed upon the roll *des enquêtes* generally for the adduction of proof (if any there be) shall be then called on, in the order and succession in which such last mentioned cases shall stand inscribed upon such roll.

IX.

That every *enquête*, in each and every cause, shall be deemed and taken to be closed, upon the day appointed for such *enquête*, if such cause shall not then be, or previously have been struck from the roll *des enquêtes*, or thereon continued by order of the court; it being hereby declared that this rule does and shall extend to all *enquêtes ex parte*.

X.

That, after an *enquête* shall be closed,

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the leave or order of the Court for the adduction of proof upon the issue or issues to which such *enquête* shall relate, shall not be had or made, without a motion for that purpose upon affidavit authenticating the grounds upon which such motion shall be ~~formed~~: and that a motion for such purpose, without such affidavit as aforesaid, shall not be received or fyled.

XI.

That every affidavit, whereon shall be grounded any application to the Court by a defendant or defendants in any case to put off an *enquête*, on account of the absence of a material witness, shall state the facts which such defendant or defendants expect to prove by such witness, and the time at which it is probable that such witness will be able to attend, in addition to all other matters heretofore required in similar affidavits; and that an affidavit for such purpose which does not state such facts shall not be received or fyled.

XII.

That when and so often as any cause

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shall be continued upon the Roll *des Enquêtes* generally, without day, such cause shall stand continued thereon until the first day next after the day of such continuance upon which the *Enquête* to which the inscription of such cause on the Roll *des Enquêtes* shall relate, by the course of the Court, can be had.

XIII.

That when and so often as any cause shall be continued upon the Roll *de droit* generally, without day, such cause shall stand continued thereon until the first day next after the day of such continuance, upon which, by the course of the Court, such cause can be heard *en droit* upon the matter to which the inscription of such cause upon the Roll *de droit* shall relate.

XIV.

That when and so soon as the Issue or Issues shall, in any cause, be perfected, upon one or more exceptions *déclinatoires*, *péremptoires à la forme*, or *dilatatoires*, the parties to such Issue or Issues, or either of them, shall be at liberty and entitled to set down such

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cause for hearing *en droit* upon the pleadings, by which such Issue or Issues shall have been raised and perfected, by inscribing such cause upon the Roll *de droit*, in term, or in vacation, and giving notice thereof to the adverse party or parties in such cause, in the forms prescribed, in the Appendix to these rules and orders, under the numbers xxxv and xxxvi; and such cause shall be so heard upon such Issue or Issues, as soon thereafter as counsel, by the course of the Court, can be heard; it being hereby provided that no such cause shall be so heard upon such Issue or Issues, upon the day of the service of the notice hereby required, nor any cause which by order of the Court, upon motion, or otherwise, shall be struck from the Roll *de droit* without hearing, or be continued thereon for hearing to any subsequent day, or generally without day, nor any cause in which any order, in term, or in vacation, shall be made to stay proceedings, or in which the party or parties, being plaintiff or plaintiffs in such cause, shall, in the manner herein after provided, set down

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such cause for the adduction of proof generally upon such issue or issues, without a hearing *en droit* upon the pleadings, by which such issue or issues shall have been so raised and perfected.

XV.

That when and so soon as the issue or issues shall, in any cause, be perfected upon one or more exceptions *déclinatoires*, *péremptoires à la forme*, or *dilatatoires*, as the case may be, and the party or parties, being plaintiff or plaintiffs in such cause, shall see fit to set down such cause for the adduction of proof generally upon such issue or issues, without a hearing *en droit* upon the pleadings in such cause fyled, such party or parties, being plaintiff or plaintiffs in such cause, shall be at liberty and entitled so to do, by inscribing such cause on the roll *des Enquêtes*, and giving notice thereof, in term, or in vacation, to the adverse party or parties in such cause, in the forms prescribed in the appendix to these rules and orders, under the numbers xxxvii and xxx.

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VIII, and upon proof of the service of such notice, by affidavit or certificate, as well the party and parties giving such notice as the party and parties, upon whom such notice shall be served, shall be held and bound to adduce and to file all such witnesses, evidence, proof and testimony written and unwritten as they, or either of them, may have, and by law may be permitted to adduce or file upon such issue or issues, upon the first *enquête* day, in term, or vacation, next after the day upon which such notice shall be served; and shall not thereafter be permitted to adduce or to file any witnesses, evidence, proof, or testimony whatsoever written, or unwritten, upon such issue or issues, without the leave or order of the Court for that purpose; it being hereby provided that such adverse party or parties shall not be hereby held or bound to adduce or file, on such *enquête* day, as aforesaid, any witnesses, evidence, proof, or testimony whatever written, or unwritten, in any case, in which there shall not be one Juridical day in term, or fourteen days in vacation, between the day of

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the service of the notice hereby required and such *enquête* day as aforesaid, nor in any case, in which such cause by order of the Court, upon motion or otherwise shall be struck from the roll *des enquêtes*, or be continued thereon to any subsequent day, or generally without day, or in which any order, in term or vacation, shall be made to stay proceedings.

XVI.

That every cause, in which a *défense en droit* shall be fyled and issue thereon shall be raised and perfected, shall be heard *en droit*, as well upon the pleadings in such cause fyled, by which such issue shall have been raised and perfected, as upon the pleadings in such cause fyled, by which any issue or issues shall have been raised and perfected upon any exception *péremptoire en droit*, temporary or perpetual, and *défense en fait* (if such there be); it being hereby provided that such cause shall be heard *en droit*, at one and the same time, upon all such pleadings in such cause fyled, and that, at such time, the hearing on

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such *défense en droit* and the pleadings thereon shall precede the hearing *en droit* upon such *exception* and *défense en fait*, and the pleadings thereon.

XVII.

That when and so soon as the issue or issues shall, in any cause, be perfected as well upon one or more exceptions *peremptoires en droit*, temporary or perpetual (as the case may be) as upon the *défense au fonds, en droit* and *en fait* (if such there be) the parties to such issue or issues, or either of them, shall be at liberty and entitled to set down such cause for hearing *en droit* upon the pleadings, by which such issue or issues shall have been raised and perfected, by inscribing such cause upon the roll *de droit*, in term or in vacation, and giving notice thereof to the adverse party or parties in such cause in the forms prescribed, in the appendix to these rules and orders, under the number XXXIX and XL, and such cause shall be so heard, upon such issue and issues, as soon thereafter as counsel, by the course of the Court, can be heard; it being here-

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by provided that no cause shall be so heard upon such issue or issues upon the day of the service of the notice hereby required; nor any cause which by order of the Court upon motion or otherwise shall be struck from the roll *de droit* without hearing, or be continued thereon for hearing to any subsequent day, or generally without day, nor any cause, in which any order, in term or vacation, shall be made to stay proceedings, or in which no *défense en droit* being filed the party or parties being plaintiff or plaintiffs in such cause shall, in the manner herein after provided, set down such cause for the adduction of proof generally upon such issue or issues, without a hearing *en droit* upon the pleadings, by which such issue or issues shall have been so raised and perfected.

XVIII.

That when and so soon as the issue or issues shall, in any cause, be perfected, as well upon one or more exceptions *peremptoires en droit*, temporary or perpetual (as the case may be) as upon the *défense au fonds en fait* (if such there

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be) and the party or parties being plaintiff or plaintiffs, in such case, shall see fit to set down such cause for the adduction of proof generally, upon such issue or issues, without a hearing *en droit* upon the pleadings in such cause fyled, such party or parties, being plaintiff or plaintiffs in such cause, shall be at liberty and entitled so to do by inscribing such cause on the roll *des enquêtes*, and giving notice thereof, in term or in vacation, to the adverse party or parties in such cause in the forms prescribed, in the appendix to these rules and orders, under the numbers *XL* and *XLII*; and upon proof of the service of such notice, by affidavit or certificate, as well the party and parties giving such notice as the party and parties upon whom such notice shall be served, shall be held and bound to adduce and to fyle all such witnesses, evidence, proof and testimony, written and unwritten, as they, or either of them, may have (and by law may be permitted to adduce or fyle) upon such issue or issues, upon the first *enquête* day, in term or vacation, next after the day

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upon which such notice shall be served; and shall not thereafter be permitted to adduce or to fyle any witnesses, evidence, proof or testimony whatsoever, written or unwritten, upon such issue or issues, without the leave and order of the Court for that purpose; it being hereby provided that such adverse party or parties shall not be hereby held or bound to adduce or fyle, on such *enquête* day as aforesaid, any witnesses, evidence, proof or testimony whatever, written or unwritten, in any case, in which there shall not be one Juridical day in term, or fourteen days in vacation, between the day of the service of the notice hereby required and such *enquête* day as aforesaid, nor in any case in which such cause by order of the Court, upon motion or otherwise shall be struck from the roll *des enquêtes*, or be continued thereon to some subsequent day, or generally without day, or in which any order, in term or vacation, shall be made to stay proceedings, or in which a *défense en droit* shall have been filed.

XIX.

That when and so soon as any cause shall have been heard *en droit* upon the pleadings in such cause fyled, by which any issue or issues shall have been raised and perfected, upon any exceptions *déclinatoires*, *péremptoires à la forme*, or *dilatatoires*, or upon the pleadings in such cause fyled, by which any issue or issues shall have been raised and perfected, upon any exceptions *péremptoires en droit*, temporary or perpetual, or *dé-fense en droit*, or *en fait*, and the adduction of proof shall be ordered by the Court upon any or either of such issue or issues, the party or parties, being plaintiff or plaintiffs in such cause, shall be at liberty and entitled to set down such cause for the adduction of proof generally upon the issue or issues, upon which the adduction of proof shall be so ordered, by inscribing such cause on the roll *des enquêtes*, and giving notice thereof in term, or in vacation, to the adverse party or parties, in the forms prescribed, in the appendix to these rules and orders, under the numbers XLIII and XLIV ; and upon proof of

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the service of such notice, by affidavit or certificate, as well the party and parties giving such notice as the party and parties upon whom such notice shall be served, shall be held and bound to adduce and to fyle all such witnesses, evidence, proof and testimony, written and unwritten, as they or either of them may have, and by law may be permitted, to adduce or fyle upon such issue or issues, upon the first *enquête* day, in term or in vacation, next after the day upon which such notice shall be served; and shall not thereafter be permitted to adduce or fyle any witnesses, evidence, proof, or testimony whatever, written or unwritten, upon such issue or issues; it being hereby provided that such adverse party or parties shall not be hereby held or bound to adduce or fyle any witnesses, evidence, proof, or testimony, written or unwritten, in any case, in which there shall not be one Juridical day in term, or fourteen days in vacation, between the day of the service of the notice hereby required and such *enquête*.

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day as aforesaid, nor in any cause, in which such cause, by order of the Court, upon motion, or otherwise, shall be struck from the roll *des enquêtes*, or be continued thereon to any subsequent day, or generally without day, or in which any order, in term or vacation, shall be made to stay proceedings.

XX.

That when and so soon as the *enquête*, upon any issue or issues joined, upon any exceptions *déclinatoires*, *péremptoires à la forme*, *ditatoires*, *péremptoires en droit*, temporary or perpetual, or *défense en fait*, shall, in any cause, be closed, the parties to such issue or issues, or either of them, shall be at liberty and entitled to set down such cause for final hearing upon such issue or issues upon the merits, by inscribing such cause upon the roll *de droit*, in term or in vacation; and giving notice thereof to the adverse party or parties in such cause in the form prescribed, in the appendix to these rules and orders, under the number XLV; and upon proof of the service of such notice by affidavit

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or certificate, such cause shall be so heard, as soon thereafter as counsel, by the course of the Court, can be heard; it being hereby provided that no such cause shall be so heard upon such issue, in any case, in which there shall not be one Juridical day in term, and four days in vacation, between the day of the service of the notice hereby required and the day upon which such cause, upon such issue, by the course of the Court, may be heard, nor in any case, in which such cause, by order of the Court, upon motion or otherwise, shall be struck from the roll of final hearing, or be continued thereon to any subsequent day, or generally without day, or in which any order, in term or vacation, shall be made to stay proceeding.

XXI.

That every cause regularly inscribed on the roll *des enquêtes*, in which (such cause being called on) the parties, as well plaintiff or plaintiffs as defendant or defendants therein, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for

not proceeding, shall be struck from such roll, each party paying his own costs.

XXII.

That in every cause which shall be regularly inscribed upon the roll *des enquêtes* by the party or parties, being plaintiff or plaintiffs in such cause, in which (such cause being called on) such party or parties being plaintiff or plaintiffs shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and in which the party or parties, being defendant or defendants, in such cause, shall appear and be ready to proceed, the action of such plaintiff or plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs to such defendant or defendants.

XXIII.

That in every cause which shall be regularly inscribed on the roll *des enquêtes* by the party or parties defendant or defendants in such cause, and in which (such cause being called on)

such defendant or defendants shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the party or parties being plaintiff or plaintiffs in such cause shall appear and be ready to proceed, the *enquête* to which the inscription of such cause on the roll *des enquêtes* as aforesaid shall relate, shall be had *ex parte* on the behalf of such party or parties being plaintiff or plaintiffs in such cause.

XXIV.

That in every cause which shall be regularly inscribed upon the roll *des enquêtes* by the party or parties, being plaintiff or plaintiffs in such cause, in which (such cause being called on) such party or parties, being plaintiff or plaintiffs, shall appear and be ready to proceed, and shall make due proof, by affidavit or certificate, of due service of the notice of the inscription of such cause on the roll *des enquêtes*, required in such case by these rules and orders, and the party or parties, being defendant or defendants in such cause, shall not ap-

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pear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, the *enquête*, to which the inscription of such cause on the roll *des enquêtes* as aforesaid shall relate, shall be had *ex parte* on the behalf of such party or parties being plaintiff or plaintiffs in such cause.

XXV.

That in every cause which shall be regularly inscribed upon the roll *des enquêtes* by the party or parties, being defendant or defendants in such cause, and in which (such cause being called on) such party or parties so being defendant or defendants shall appear, and make due proof, by affidavit or certificate, of due service of the notice of the inscription of such cause on the roll *des enquêtes*, required in such case by these rules and orders, and the party or parties, being plaintiff or plaintiffs in such cause shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, the action of such plaintiff or plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs

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XXVI.

That every cause regularly inscribed on the roll *de droit*, for hearing upon any matter, other than the pleadings in such cause fyled, or the merits, in which, as well the party or parties applying for such hearing, by motion or otherwise, as the party or parties respondent or respondents in such matter, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall be struck from such roll, each party paying his own costs.

XXVII.

That every cause regularly inscribed on the roll *de droit*, for hearing *en droit* upon any matter, other than the pleadings in such cause fyled, or on the merits, in which the party or parties who shall have so inscribed such cause on the roll *de droit* shall appear, and shall make due proof, by affidavit or certificate, of due service of the notice of the inscription of such cause as aforesaid, on the roll *de droit*, upon the party or

parties, and in the manner indicated and required, in such case, by these rules and orders, and the party or parties, upon whom such notice shall have been so served, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall, upon the matter to which the inscription of such cause on the roll *de droit* shall relate, be heard *ex parte* on the behalf of the party or parties, who shall have so inscribed such cause on the roll *de droit*.

XXVIII.

That every cause regularly inscribed on the roll *de droit*, for hearing upon any matter, other than the pleadings in such cause filed, or the merits, in which the party or parties, who shall have so inscribed such cause on the roll *de droit*, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the party or parties, being respondent or respondents in the matter so inscribed upon the roll *de droit*, shall appear and be ready to proceed, shall be struck from such roll, with costs to such respondent

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XXIX.

That every cause regularly inscribed on the roll *de droit*, for hearing *en droit* on the pleadings in such cause fyled, or on the merits, in which (such cause being called on) the parties, as well plaintiff or plaintiffs as defendant or defendants therein, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall be struck from such roll, each party paying his own costs.

XXX.

That in every cause regularly inscribed, by the party or parties plaintiff or plaintiffs in such cause, on the roll *de droit*, for hearing *en droit* upon the pleadings in such cause fyled, or on the merits, in which (such cause being called on) such plaintiff or plaintiffs shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and in which the party or parties, being defendant or defendants in the cause, shall

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appear and be ready to proceed, the action of such plaintiff or plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs to such defendant or defendants.

XXXI.

That every cause regularly inscribed, by the party or parties defendant or defendants in such cause, on the roll *de droit*, for hearing *en droit* upon the pleadings in such cause filed, or on the merits, in which (such cause being called on) such defendant or defendants shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the party or parties, being plaintiff or plaintiffs in such cause, shall appear and be ready to proceed, shall, upon the matter to which the inscription of such cause on the roll *de droit* as aforesaid shall relate, be heard *ex parte*, on the behalf of such party or parties, being plaintiff or plaintiffs in such cause.

XXXII.

That every cause regularly inscribed, by the party or parties plaintiff or plaintiffs in such cause, on the roll *de droit*,

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for hearing *en droit* upon the pleadings in such cause fyled, or on the merits, in which (such cause being called on) such party or parties, being plaintiff or plaintiffs shall appear and be ready to proceed, and shall make due proof, by affidavit or certificate, of due service of the notice of the inscription of such cause on the roll *de droit* required in such case by these rules and orders, and the party or parties, being defendant or defendants in such cause, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall, upon the matter to which the inscription of such cause on the roll *de droit* as aforesaid shall relate, be heard *ex parte*, on the behalf of such party or parties, being plaintiff or plaintiffs in such cause.

XXXIII.

That in every cause regularly inscribed, by the party or parties defendant or defendants in such cause, on the roll *de droit*, for hearing *en droit* upon the pleadings in such cause fyled, or on the

merits, in which (such cause being called on) such party or parties, so being defendant or defendants, shall appear, and make due proof, by affidavit or certificate, of due service of the notice of the inscription of such cause on the roll *de droit*, required in such case by these rules and orders, and the party or parties, being plaintiff or plaintiffs in such cause, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, the action of such plaintiff or plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs to such defendant or defendants.

XXXIV.

That a witness shall be examined by one counsel, and no more, and cross examined by one counsel, and no more.

XXXV.

That a Subpæna *ad testificandum*, and a Subpæna *duces tecum*, shall be deemed and taken to be writs of common right, and shall and may be sued out, at the proper costs and risk of the party or parties applying for the same,

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upon a *præcipe* in the form prescribed, in the appendix to these rules and orders, under the number XLVI; it being hereby provided that no more than four witnesses shall be inserted in any *ōne* Subpæna.

XXXVI.

That in every case, in which any original paper writing shall be in the possession or power of an adverse party, and the opponent or opponents of such party, in such case, shall be desirous of proving the contents of such paper writing, such opponent or opponents shall, by notice in writing, in the form prescribed in the appendix to these rules and orders, under the number XLVII; require such adverse party to produce and fyle such paper writing, upon the *enquête* to be had in such case, and service thereof, upon such adverse party, shall be made a reasonable and sufficient time before the day fixed for such *enquête*; and no evidence of the contents of any such paper writing shall be received or heard, until previous proof of such notice as aforesaid and of

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the service thereof as aforesaid upon such adverse party, by affidavit or certificate, shall have been made and fyled.

XXXVII.

That the ordinary writ of SUBPÆNA *ad testificandum* be in the form prescribed, in the appendix to these rules and orders, under the number XLVIII; and the SUBPÆNA *duces te cum* in the form prescribed, in the appendix to these rules and orders, under the number XLIX; that service of these writs respectively be made, a reasonable time before the hour at which the witness is thereby required to appear, by shewing to such witness personally the original writ of Subpæna, and delivering to him, at the same time, a true copy of such writ, certified to be such, under the signature of the Attorney of the party or parties by whom such writ shall be sued out,

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SECTION. 9.

OF MOTIONS.

IT IS ORDERED,

I.

That every motion be, in every case, made in writing, and under the signature of counsel ; and that a motion which is not so made shall not be received or fyled,

II.

That the several motions, herein after enumerated, shall be deemed and taken to be motions requiring no previous notice, that is to say,

1. For the Sheriff to return a writ.
2. For the Sheriff to bring in the body.
3. For security for costs, the plaintiff being a person residing without the province, and stated so to be on the face of the declaration.
4. To record a default in every instance, in which a motion for that purpose is not by these rules and orders forbidden.
5. To call a party in any suit, for any

purpose, for which a motion is not by these rules and orders forbidden.

6. To ask *acte* of the Court.
7. To strike or continue a cause upon the roll *de droit*, or roll *d'enquêtes*.
8. To pay money into Court.
9. For leave to proceed *ex parte*.
10. To discontinue, on payment of costs.
11. To fyle a *retraxit*, on payment of costs.
12. To examine upon *faits et articles*.
13. To defer, or refer the *serment décisive*.
14. For judgment, in any case.
15. For a rule to shew cause, in any case.

And all such motions, as by any rule or order of the Court, shall hereafter be declared to be motions requiring no previous notice.

III.

That of all motions, not herein before enumerated, previous notice shall, in every case, be given by the party or parties making such motion to the opponent and opponents, in such case, of the party or parties making such motion

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(if such there be) in the form prescribed, in the appendix to these rules and orders under the number 1; and that service of every such notice be made by the space of one day, at least, before the day appointed by such notice for the making of such motion; and if any such motion shall be made, without an affidavit or certificate of the service of such notice, in the manner hereby required, such motion shall not be received or fyled.

IV.

That when, and so often as this Court shall be moved, in any case, upon any special matter, not appearing upon the record, or proceedings fyled in such case, such special matter shall previously be authenticated by affidavit, or by some *preuve authentique*, and a copy thereof shall be duly served by the space of one day, at least, upon the opponent or opponents, in such case, of the party or parties making such motion (if such there be;) and if any such motion shall be made, without an affidavit, or

some *preuve authentique* of such special matter, and without an affidavit or certificate of such service of a copy thereof, as is hereby required, such motion shall not be received or fyled; and no affidavit, of which a copy hath not been so served, shall be read or fyled in support of any such motion.

V.

That affidavits, upon which any motion shall be grounded, shall be properly entitled of the cause in which the same shall be sworn and used, and contain a full statement of all the circumstances necessary for the support of such motion; and no supplementary affidavits shall, in any case, be received or fyled, without leave of the Court.

VI.

That, in all cases of motions, all objections for improper intituling, for imperfections of notice or of service, and other similar causes, be made before the grounds of such motion be heard; and, if such objections be not so made, they and each of them shall be held and taken to be waved, and shall not after-

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VII.

" That all notices of motions be given for the first day next after the day of the service thereof upon which counsel, by the course and practice of the Court, may be heard thereon ; and no proceedings shall, in any case, be staid by any such notice, nor by any rule or order of the Court *nisi*, which shall not upon the face of it direct that the proceedings, in such case, shall be staid.

VIII.

That every rule *nisi* shall be inscribed on the roll *de droit*, and cause shall be shown thereon (if any there be) upon the day appointed by such rule, and as soon, after the common motions, as counsel can be heard.

IX.

That in every case, in which a motion shall be appointed for hearing, on any particular day, by previous notice, and the party or parties giving notice of such motion shall not appear, or appearing shall not be ready to proceed, and shall

not shew good cause for not proceeding, and the party or parties respondent or respondents thereupon shall appear, the costs of such party or parties respondent or respondents, incurred by reason of such notice, shall be awarded to such respondent or respondents who shall so appear against the party or parties giving such notice; and if the party or parties giving such notice of such motion shall appear, and be ready to proceed, and the party or parties respondent or respondents thereupon shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the hearing of such motion shall not be put off by order or leave of the Court, such motion shall be heard *ex parte*, on the behalf of the party or parties giving notice of such motion who shall so appear.

X.

That every motion for the Sheriff to bring in the body, upon an arrest by writ of *capias ad respondendum*, and for amerciaments in default thereof, shall

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be in the form prescribed, in the appendix to these rules and orders, under the number LI ; and that every motion for the Sheriff to bring in the Body, upon an arrest by writ of *capias ad respondendum*, and for an attachment in default thereof, shall be in the form prescribed, in the appendix to these rules and orders, under the number LII ; and that no motion for either of such purposes, in any other form, shall be received or fyled.

XI]

That every application for security for payment of costs, under the second section of the Statute 41 Geo. III. Cap. VII. shall be made by motion, in the form prescribed, in the appendix to these rules and orders, under the number LIII ; and that no motion or other application for such purpose, in any other form, shall be received or fyled.

XII.

That every motion for hearing, without answer, upon any exception *déclinatoire*, *péremptoire à la forme*, or *di-*

latvire, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LIV ; and that no motion for such purpose, in any other form, shall be received or fyled.

XIII.

That every motion, for leave to amend, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LV ; and that no motion for such purpose, in any other form, shall be received or fyled.

XIV.

That a motion, for a Jury and writ of *venire facias*, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LVI ; and that no motion for such purpose, in any other form, shall be received or fyled.

XV.

That a motion, for a reference to *Arbitres*, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LVII ; and a motion, for reference to *Experts*, shall

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be, in the form prescribed, in the appendix to these rules and orders, under the number LVIII ; that a motion, to confirm a report of *Arbitres* or *Experts*, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LIX ; and that a motion, to set aside a report of *Arbitres*, or of *Experts*, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LX ; and that no motion for either of such purposes, in any other form, be received or fyled.

XVI.

That every motion, for a rule to pay money into Court, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LXI ; and that no motion for such purpose in any other form, shall be received or fyled.

XVII.

That every application for leave to examine, in any suit, any person or persons, being a party or parties to such suit, upon *faits* and *articles*, shall be made by motion, in the form prescribed.

in the appendix to these rules and orders, under the number LXII ; and that no motion for such purpose, in any other form, shall be received or fyled.

XVIII.

That a motion by any party, in any case, to defer any matter or matters of fact to the *serment décisoire* of any other party or parties in such case, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LXIII ; that every such motion which doth not set forth distinctly the question or questions to be proposed to such party or parties shall not be received or fyled : that no question, or questions shall be put to such party or parties, upon the *serment décisoire*, other than the question or questions which in the motion for that purpose shall be so, as aforesaid, set forth ; and that the authority of the Attorney *ad litem*, so to defer such matter or matters of facts, shall be annexed to, or indorsed upon such motion.

XIX.

That a motion, for Judgment upon a

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verdict, shall not be made, received, or fyled, until after the expiration of four days, in term, from the day on which such verdict shall be recorded.

XX.

That every motion, to confirm and homologate a report of *distribution* and *collocation*, report of *distribution*, or report of *collocation*, made by the Prothonotary, shall be, in the form prescribed, in the appendix to these rules and orders, under the number LXIV; and that no motion for such purpose, in any other form, shall be received or fyled.

XXI.

That every motion, for a new trial after verdict, be made on, or before, the expiration of the fourth day, in term, next after the day on which such verdict shall be recorded; that no such motion be afterwards received or fyled; and that no motion for a new trial be received or fyled, after a motion in arrest of judgment shall have been made.

XXII.

That every motion, in arrest of judgment after verdict, be made on, or before the expiration of the fourth day, in term, next after the day on which such verdict shall be recorded; and that no such motion be, afterwards, received or fyled.

XXIII.

That in every case, in which a matter shall come on before the Court upon a rule to shew cause, such rule and the affidavits, or other proof on which the same is grounded, shall be first read by the Prothonotary, the Counsel who shew cause shall then be heard, and lastly the Counsel of the party or parties, by whom the rule shall have been obtained, shall also be heard.

XXIV.

That all costs, to which, in any case, any party is entitled, upon a motion in any way, be asked for, at the time, at which such motion is made and heard, and shall not be the object of any future motion.

XXV.

That in every case, in which nothing

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is said as to costs in the rule *nisi*, or in the rule or order of the Court making absolute, or discharging such rule *nisi*, or in the rule or order of the Court, by which any motion, upon which a rule *nisi* hath not been obtained, is allowed, or over-ruled, the costs incurred, in either case, shall be considered as costs in the cause, and be paid to the party ultimately succeeding in such case.

XXVI.

That a motion which cannot be decided, unless by a rule or order of the Court thereupon, by which the merits of the case, in which such motion is made, will be also decided, shall not be allowed.

XXVII.

That if any matter be, in any case, moved in Court, in the presence of the Attornies and Counsel of the parties, and the Court thereupon shall make a rule between them, the same shall not again be moved contrary to such rule.

SECTION 10.

OF FAITS AND ARTICLES, AND OF
COMMISSIONS ROGATOIRES.

IT IS ORDERED,

I.

That a motion for leave to examine a party or parties, in any case, upon *faits et articles*, shall be received, at any time, after issue joined, until the en-
quête in such case shall be closed, and not afterwards ; it being hereby provided that a motion for such leave may be made, in any case, and received before issue joined, upon affidavit of any extraordinary circumstances, which shew that the party or parties so moving will, in such case, lose the benefit of an examination, upon *faits et articles*, if such motion be not allowed.

II.

That the interrogatories to be put to the interrogate, upon an examination on *faits et articles*, shall be exhibited and fyled, with the certificate of the service of the rule or order of the Court for the

additions aux règles de
Pratique. —

20 Juin 1810 —

Les commissions rogatoires peuvent
être ouvertes lors de l'Enquête, et à
défaut d'Enquête lors de l'audition
en même temps, sans qu'il soit besoin
d'aucune motion à cet effet.

Les crises par excitation doivent se
faire à neuf heures du matin.

20 Octobre 1814 —

Motion de caution pour les frais sera
faite dans les quatre jours après —
Comparution.

20 Juin 1817 —

Toute opposition afin de distraire ou
afin d'annuler contiendra les moyens de telle
opposition et sera accompagnée des titres s'il y
a; et si telle opposition ne contiennent pas
de

de moyens - Le Juge ne les -
recevra pas - ni ne les fera - et -
procédera, or tu.

20 Oct. 1818

Un writ de Saisie Anet pour
sur un Jugement pour une emane
sur un Procès & sans qu'il soit
besoin de Déclaration.

2 Juin 1820 -

Aucune motion pour des moyens,
sur les oppositions afin de distraire
ou d'annuler, ne sera reçu.

20 Juin 1820 -

L'assistant Bailleur d'audience
recevra 5^{fr} pour chaque témoin
assermenté au Grand Terme -
5^{fr} sur chaque subpoena au
petit Terme.

20 Février 1821

La règle pour homologation d'un
Rapport de distribution sera à
l'avenir

L'avenir affiché au Greffe

19 Avril 1821.

Dans le cas où un Défendeur est en prison et l'épave est parfait, il peut par motion mise à l'ordre à la Cour pour inscrire la cause au rôle d'Enquête ou au rôle de Droit.

Mescauses oparte seulement, —
seront entendus l'avant dernier jour de
chaque Terme.

La troisième Enquête aura lieu le
12^{me} jour d'indigé au lieu du 13^{me}.

20 Juin 1822

19th October 1822.

It is ordered that in future to all
Oppositions afin d'annuler, afin de
distancer or afin de charge, There shall
be annexed an affidavit sworn before one
of the Clerks of this Court or before a
Commissioner duly authorized to take and

Receive

receive affidavits, to be read and used
in this Court, which affidavit shall
be in the form following, viz:—

A.B. of ~~the~~ being duly sworn
upon the Holy Evangelists of Almighty
God doth depose and say, that the
facts articulated and set forth in the
annexed opposition ~~of~~ to... and...
each and every of them, is and are
true, and that the said opposition
is not made, with any intent to
obtain or delay unnecessarily the
sale of the whole, or any part of
the ~~Immoveable~~, or Immoveable,
properly seized by virtue of the
writ or writs of Execution in
this cause issued. —

Sworn before me at
this day of 1823 }

And any opposition as aforesaid,
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OF FAITS ET ART. & Com. Sect. 10. 133

appearance of such interrogate for such examination as aforesaid, and not before; that a copy of such interrogatories shall be served, with such rule or order, upon the interrogate; and that service of such rule or order, and of such copy of such interrogatories, at any time before the hour of six in the afternoon of the Juridical day next preceeding the day by such rule or order appointed for the appearance of such interrogate for such examination as aforesaid, shall be deemed and taken to be good and sufficient service of such rule and order, and of such interrogatories respectively.

III.

That every legal excuse which, in any case, shall be offered, for the absence of any interrogate upon *faits et articles*, at the time and place appointed by the rule or order made in such case for the appearance of such interrogate for examination, shall be offered at such time and place, and be verified by affidavit; and if such place be the open Court, every such excuse shall be accompanied by a motion on the part of such interrogate to enlarge such rule or order to

134 OF FAITS ET ART. & COM. Sect. 10.

some future day ; and no such excuse or motion shall otherwise, or afterwards, be received or fyled.

IV.

That the default of every interrogate, who, in any case, being duly served with the rule or order to appear for examination, upon *faits et articles*, and with a copy of the interrogatories to be exhibited and fyled, shall not appear, at the time and place appointed by such rule or order for his appearance, shall be recorded, and if a legal excuse shall not then be offered, for the absence of such interrogate, and the rule or order to appear as aforesaid shall not be enlarged, the interrogatories, in such case, exhibited and fyled, and the several matters and things therein contained, at the hearing of such case, shall be taken *pro confesso* ; it being hereby provided that this rule shall not extend to any case, in which the interrogate after such default, without legal excuse as aforesaid, shall, at any time before the *enquête* closed in such case, appear and answer to such interrogatories, at

OF FAITS ET ART. & COM. Sect. 10. 135

his own proper costs, as by law is permitted.

V.

That in any case, in which, an interrogate upon *faits et articles* shall appear, at the time and place appointed for the appearance of such interrogate for examination, and then and there shall refuse to answer to any interrogatory which, in such case being exhibited and fyled, shall be put to him, the refusal of such interrogate so to answer shall be recorded ; and if, at the hearing of such case, the party or parties propounding such *faits et articles* shall move, that such interrogatory and the matters and things therein contained be taken *pro confesso*, and it shall not be then shown, that such interrogate had lawful cause to refuse to answer to such interrogatory, then, and in such case, such interrogatory and the several matters and things therein contained shall be taken *pro confesso* ; it being hereby provided that this rule shall not extend to any case, in which the interrogate, after such refusal as aforesaid shall, at any time before the *enquête* closed in

136 OF FAITS ET ART. & COM. Sect. 10.

such case, appear and answer to such interrogatories, at his own proper costs, as by law is permitted.

VI.

That every *commission rogatoire*, for the examination of any party or parties, in any case, upon *faits et articles*, upon the *serment décisoire*, or *judiciaire*, shall be in the form prescribed, in the appendix to these rules and orders, under the number LXV-

VII.

That in every case, in which, a *commission rogatoire*, for the examination of any party or parties, in any case, upon *faits et articles*, or upon the *serment décisoire*, shall not be returned on, or before the day thereby appointed and limited for the return thereof, (if such there be,) or within a reasonable time after the issuing thereof (if such *commission* be returnable without delay,) it shall be competent to the parties, in such case, and to each of them, to proceed therein, as if no such *commission* had issued; unless good cause to the con-

OF FAITS ET ART. & COM. Sect. 10. 137

trary be shown, upon motion for that purpose:

VIII.

That every *commission rogatoire*, for the examination of witnesses, shall be in the form prescribed, in the appendix to these rules and orders, under the number LXVI.

IX.

That every *commission*, in the nature of a *commission rogatoire*, for the examination of witnesses, to be issued under and by virtue of the ordinance 31. Geo. III. Cap. 2. or under and by virtue of the ordinance 32. Geo. III. Cap. 2. shall be in the form prescribed, in the appendix to these rules and orders, under the number LXVII. that the oath to be taken by the Commissioners, to whom such *commission* shall be addressed, shall be in the form prescribed, in the appendix to these rules and orders, under the number LXVIII. that the form of the oath, to be taken by the clerk to such commissioners, shall be in the form prescribed, in the appendix to these rules and orders, under the

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number LXIX ; and that the form of the oath, to be administered to witnesses examined by virtue of such *commission*, shall be in the form prescribed, in the appendix to these rules and orders, under the number LXX.

X.

That no *commission rogatoire*, for the examination of witnesses, or *commission* in the nature of a *commission rogatoire*, for the examination of witnesses, shall issue, before issue perfected ; and every such *commission* applied for in term, shall be applied for by motion, within four days after issue joined ; and no motion for any such *commission* shall afterwards be received, or fyled ; and if applied for in vacation, every such *commission* shall be applied for by petition to any two of the Justices of this Court, within four days after issue joined ; and no such petition shall afterwards be received, or any such *commission* allowed.

XI.

That no interrogatories or cross interrogatories shall be annexed to any *commission rogatoire* for the examina-

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tion of witnesses, or *commission* in the nature of *commission rogatoire* for examination of witnesses, without the allowance and order of the Court in term, or the allowance and order of two of the Justices of this Court in vacation made upon summons (those cases excepted in which such interrogatories and cross interrogatories shall be settled by consent;) and any interrogatories, or cross interrogatories which shall be allowed and ordered to be annexed to any such *commission*, by the Court in term, or by any two Justices of this Court in vacation, shall not afterwards be liable to objection, in any shape.

XII.

That in every case, in which the interrogatories, or cross interrogatories to be annexed to a *commission rogatoire* for the examination of witnesses, or to any *commission* in the nature of a *commission rogatoire* for the examination of witnesses, shall be settled by consent, the same shall be mutually signed by the counsel of both parties; and any interrogatories or cross interrogatories,

which shall be signed by the counsel of both parties, shall be deemed and taken to be settled by consent, and shall be annexed to such *commission*, without the order of the Court, or of any of the Justices of this Court for that purpose; and such interrogatories and cross interrogatories, so settled by consent, shall not afterwards be liable to objection, in any shape.

XIII.

That in every case, in which a rule *nisi* shall be made, on motion in term, or a summons to shew cause shall be sued out in vacation, for the purpose of obtaining of the Court, or of two of the Justices thereof, the allowance of any interrogatories, or cross interrogatories to be annexed to any *commission rogatoire* for the examination of witnesses, or to any *commission* in the nature of a *commission rogatoire* for the examination of witnesses, and the party or parties, required by such rule or summons to shew cause, shall not attend, at the time and place by such rule or summons appointed for that purpose, an order upon due proof of service of a

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OF FACTS ET ART. & COM. Sect. 10. 111

copy thereof, and of the rule *nisi*, upon such party or parties so required to shew cause, or of the summons in such case issued, shall be made for annexing to such *commission* such interrogatories and cross interrogatories, as upon examination shall be allowed.

XIV.

That in every case, in which a *commission rogatoire* for the examination of witnesses, or *commission* in the nature of a *commission rogatoire* for the examination of witnesses, shall not be returned on, or before the day thereby appointed and limited for the return thereof (if such there be,) or within a reasonable time after the issuing thereof (if such *commission* be returnable without delay,) it shall be competent to the parties, in such case, and to each of them, to proceed therein, as if no such *commission* had issued; unless good cause to the contrary be shown, upon motion for that purpose.

SECTION. 11.

OF REFERENCES TO JURIES, TO
ARBITRES, TO EXPERTS AND OTHERS.

IT IS ORDERED,

I.

That the option and choice of any party or parties to have and obtain the trial and verdict of a Jury, in any case in which the same by law may be had, shall be made and declared by motion for a Jury and writ of *venire facias*.

II.

That a motion for a Jury and *venire facias* be made, within two days in term, after issue perfected, whether such issue be perfected in term, or in vacation; and no such motion, in any case, shall be received or fyled thereafter, or at any time after the inscription in vacation, of such case upon the roll *des enquêtes* for hearing upon such issue, unless proceedings in such case shall be staid, as hereinafter is directed.

III.

That when, and so often as any issue

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to which an Affidavit in form aforesaid
shall not be, annexed shall not
impede or delay the due execution
of any Writ of *Fieri Facias* or
Venditioni Exponas issued in any
cause, and notwithstanding the sewing
or filing of any such opposition as
aforesaid without such Affidavit as
aforesaid in any cause, The Sheriff
to whom any Writ of *Fieri Facias* or
Venditioni Exponas shall in such case,
be addressed, shall proceed to the due
execution of such Writ of *Fieri Facias*
or *Venditioni Exponas* in like manner
as if no opposition had been sewed or
filed - It being nevertheless provided
that all such oppositions, as aforesaid -
which shall be so sewed without such
affidavit as aforesaid, shall be returned
into this Court with such Writ of *Fi. Fa.*
or *Vend. Ex.* on the return day thereof.

That every opposition *alio die*
Consequenter

Consent upon the proceeds of
any moveable or Immoveable
property, shall in future be served
or filed, before, or within 24—
hours next after, the return day—
of the Writ of Execution under and
by virtue of which such property
moveable or Immoveable, shall be
sold, and that no opposition after
the expiration of 24 hours next after
such return day shall be received
or filed—

That the rules and orders,
prescribed by this Court with
respect to pleadings, answers
& hearings upon demands in
Chief and each and every one
of them shall in all things—
apply to and be the rules and

orders of this Court with
respect to all pleadings,
or
inquiries and hearings upon
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shall, in any case, be perfected in vacation, upon which the trial and verdict of a Jury by law may apparently be had, a notice of motion for a jury and *venire facias*, upon the first day of the then next ensuing term, by any party or parties, in such case, to their opponent or opponents, made and served, at any time before such issue shall be inscribed on the roll *des enquêtes*, and at any time within two days thereafter, with the order of any one or more of the Justices of this Court to such effect, upon summons for that purpose, shall stay all proceedings until the first day of the then next ensuing term.

IV.

That the party, who shall make option and choice of the trial and verdict of a Jury, in any case, shall bear and pay, as well the fees payable to the several officers of this Court for striking, summoning, and impanelling such Jurors, as the fees payable to the Jurors who, in such case, shall appear and compose the Jury; and to this end the party, with his motion for a *venire facias*, shall deposit in the hands of the

144 OF REFER. TO JURIES &c. Sect. 11.

Prothonotary of this Court the sum of forty Shillings.

To be distributed in the manner following, that is to say, to the Prothonotary for striking the Jury, for the writ of *venire facias*, for calling and swearing the Jury and recording the verdict, the sum of twenty shillings.

And to the Sheriff for summoning the Jury and returning the *venire facias*, and all charges incidental thereto the sum of twenty shillings.

With such further sum as the Jury, in such case, shall be entitled to have and receive for their verdict under and by virtue of the 22 Section of the Ordinance of 25 Geo. III. Cap. 2.

And that, without such deposit, a motion for a Jury and *venire facias*, or for either, shall not, in any case, be received or fyled; it being hereby provided that every such party who shall have and obtain a verdict in his favor, and be entitled to costs thereon, shall be allowed the same upon the taxation of such costs.

V.

That each Jury shall be struck before

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OF REFER. TO JURIES &c. Sect. 11. 145

the Prothonotary, upon a reference for that purpose by the Court ; and that upon such reference, in any case, the Prothonotary, in the presence of the Attornies of the parties, in such case, shall, at a time to be appointed by the Court, take from the first, or second list, or book of Jurors of record in this Court, as shall be ordered, the names of forty eight Jurors, commeneing, at that part of such list, or book of Jurors, from whence the then last preceeding Jury, shall have been struck or taken ; that of the names of such forty-eight Jurors, twelve, on each side, shall then and there be alternately struck out by the Attornies of the parties, in such case, then and there present, the Attorney for the plaintiff beginning ; and that the list of the remaining twenty-four Jurors shall be the pannel of Jurors, to be summoned, in such case, and as such be annexed to the *venire facias*, which, in such case, shall be issued.

VI.

That upon any reference by the Court made to the Prothonotary, in any case, for striking a Jury, if the Attorney of one side shall make default to appear before the said Prothonotary, at the time appointed, or appearing shall refuse to strike out from the list of forty-eight Jurors, in such case, taken from the list, or book of Jurors, the names of twelve, or of any lesser number of such Jurors, the Prothonotary, in the absence of such Attorney, who shall so make default, or refuse to strike out such names as aforesaid, shall strike out of the said list of forty-eight Jurors twelve, on the behalf of the party of such Attorney, in the manner directed in the last preceding rule, or such lesser number as such Attorney appearing shall refuse to strike out; and twelve shall, in like manner, be struck out from the said list by the Attorney of the other party; and the list of the remaining twenty-four Jurors shall be the panel of Jurors to be summoned, in such case, and as such be annexed to the *venire facias*, which,

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VII.

That the writ of *venire facias* shall be in the form prescribed, in the appendix to these rules and orders, under the number LXXI, shall be tested upon the day, on which the rule or order therefore shall be made, and shall not be returnable in less than two days from the teste thereof.

VIII.

That the issue or issues, in any case, referred to the trial and verdict of a Jury, by order of the Court, shall not be tried by the Court; and if, in any such case, the trial shall go off, for default of Jurors, an *alias venire facias* shall issue for bringing in the same Jury, for the trial of such issue.

IX.

That, in every case, so soon as the Jury shall be sworn, the parties, in such case, shall be solemnly called, and if neither party shall appear, such Jury shall forthwith be discharged, but if the plaintiff shall appear and the defen-

dant, being so called, shall not appear, the default of such defendant shall be recorded, and thereupon the evidence of the plaintiff shall be heard *ex parte*, the verdict of the Jury taken thereon, and judgment entered, as to law and justice shall appertain ; and if the defendant being so called, shall appear and the plaintiff, being so called, shall not appear, the default of such plaintiff shall be recorded, and judgment of NON SUIT thereupon entered *instante*, dismissing such plaintiff, *sauf à se pourvoir*, with costs to the defendant,

X.

That in every case, in which a jury shall be sworn, and the plaintiff, in such case, shall choose, at any time before the verdict of such Jury shall be given, to become NON SUIT, and for that purpose shall withdraw from the Court, such plaintiff shall be solemnly called, and not appearing, the default of such plaintiff shall be recorded, and judgment of NON SUIT thereupon entered *instante*, dismissing such plaintiff, *sauf à se pourvoir*, with costs to the

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OF REFER. TO JURIES &c. Sect. 11. 149
defendant.

XI.

That no reference to *arbitres*, to *experts*, or other referees of any description, shall be made, by rule or order of this Court entered by consent or otherwise, in any case, before the issue or issues, in such case, shall be perfected; and then only of the matters to which such issue or issues shall relate.

XII.

That no conclusions, in writing, upon any report of *arbitres*, *experts*, or other referees, shall be received or fyled, nor shall any issue, in writing, be raised thereon, and the validity of every such report shall be decided upon a motion *nisi* to confirm and homologate the report, or to set aside the report, as the case may be.

XIII.

That a motion (except by consent) to confirm and homologate, or to set aside a report shall not be received or fyled upon the day upon which the report to which such motion relates shall be fyled.

XIV.

That the writ of Subpœna *ad testificandum*, before *arbitres*, *experts*, or other referees, be in the form prescribed, in the appendix to these rules and orders, under the number LXXII; and be served, in the like manner and in all things as the ordinary writ of Subpœna *ad testificandum*.

XV.

That every commission to administer the oath required by the provincial statute 48. Geo. III. Cap. 22. to be administered to *experts*, and to witnesses to be examined before *experts*, and before *arbitres*, or arbitrators, shall be in the form prescribed, in the appendix to these rules and orders, under the number LXXIII.

SECTION 12.

OF JUDGMENT AND EXECUTION.

IT IS ORDERED,

I.

That every writ of execution shall be

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OF JUDGM. AND EXEC. Sect 12. 151

in the form herein after mentioned, that is to say, the writ of *capias ad satisfaciendum* in the form prescribed, in the appendix to these rules and orders, under the number LXXIV. The writ of *fieri facias* in the form prescribed, in the appendix to these rules and orders, under the number LXXV. the writ of *venditioni exponas* in the form prescribed, in the appendix to these rules and orders, under the number LXXVI.

II.

That no writ of execution of any description shall issue until a *præcipe* for such writ in the form prescribed, in the appendix to these rules and orders, under the number LXXVII. shall be fyled in the office of the Prothonotary, under the signature of the Attorney *ad litem*, by whom such writ shall be sued out; and that every such writ be indorsed or signed by the Attorney, by whom such writ shall be so sued out.

III.

That in every case in which a writ of execution shall not have been sued out

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within the period of twelve months, from the date of the final judgment, in such case, or from the date of the return of the last writ of execution in such case issued, if any shall have been issued, no writ, or further writ of execution shall issue, without leave of the Court in term, or of some justice thereof in vacation, first had and obtained, upon a rule or summons to shew cause, why such writ, or further writ of execution should not issue, for the amount of the judgment whereon such writ, or further writ of execution shall be founded, or for such part thereof as may be due and unsatisfied, first duly served upon the party or parties against whom such writ or further writ of execution shall be asked.

IV.

That a register of all writs of execution issued from this Court specifying the description of each writ, the parties to the case in which it issues, the number of such case, the name of the Attorney, or person by whom such writ shall be sued out, the amount to

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OF JUDGM. AND EXEC. Sect 12. 163

be levied by virtue thereof, the cause of action, the date of the judgment, on which such writ shall be founded, the day on which such writ shall issue, and the return day thereof, be made and kept by the Prothonotary in his office, to which all persons shall, at all times, during office hours, have free access *gratis*.

V.

That a register of all writs of execution, and of all oppositions filed in the office of the Sheriff of the District of Quebec, be made and kept by the said Sheriff in his office, to which all persons shall, at all times, during office hours have free access *gratis*; that such register shall specify the description of each writ of execution which shall hereafter be issued and come to his hands, the parties to the case, in which such writ shall issue, the number of such case the name of the Attorney, or person by whom such writ shall be sued out, the amount to be levied, under and by virtue thereof, the cause of action, the date of the judg-

164 OF JUDGM. AND EXEC. Sect. 12.

ment, on which such writ shall be founded, the day on which such writ shall have issued, the return day thereof, the day on which such writ shall be returned into the office of the Prothonotary, the amount levied under and by virtue of such writ, the means by which such amount shall be levied, the day and days of sale, the names of the purchasers in sales of immoveable property, the expence of levying such amount, the disbursements paid thereon, and the poundage which shall be retained by the Sheriff upon such writ, the description and date of each opposition which shall be fyled in consequence of such writ of execution, the name of the Attorney, or person by whom such opposition shall be made, the day on which such opposition shall be fyled, the amount thereby demanded, the cause and ground of such demand, the number of such opposition according to the time and order in which the same shall be fyled, with respect to others, and whether such opposition hath or hath not been withdrawn; and further that

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upon the return of every writ of execution, an extract from such register of every entry therein made, in obedience to this rule and order, respecting such writ of execution, and respecting any and each, and every opposition, which shall be fyled in consequence of such writ of execution, be made by the said Sheriff, certified under his signature, and fyled with such writ of execution.

VI.

That any opposition made, without the ministry of an Attorney of this Court, which shall not contain an election of a domicile, on the part of the opposant, at some house within the limits of the City of Quebec, under the signature or signatures of the person or persons by whom such opposition shall be made, shall not be received or fyled; which election shall be in the form prescribed in the appendix to these rules and orders, under the number LXXVIII. and all pleadings, notices, rules, judgments, and other proceedings, which pending such opposition shall

166 OF JUDGM. AND EXEC. Sect 12.

thereto relate, and be served, at the domicile thereby elected, shall be held and taken to be well and sufficiently served upon the person or persons, by whom such domicile shall be so elected.

VII.

That every opposition *afin de conserver* shall be in the form prescribed, in the appendix to these rules and orders, under the number LXXIX, and that an opposition *afin de conserver*, in any other form, shall not be received or fyled.

VIII.

That in every opposition shall be set forth, and detailed the cause and causes of such opposition as to person, time, place, and circumstance, in as full and ample a manner as the cause or causes of action, with respect to person, time, place and circumstance respectively, are by law required to be set forth, and detailed in the declaration; and that no other *moyens d'opposition* shall, in any case, be received, or fyled.

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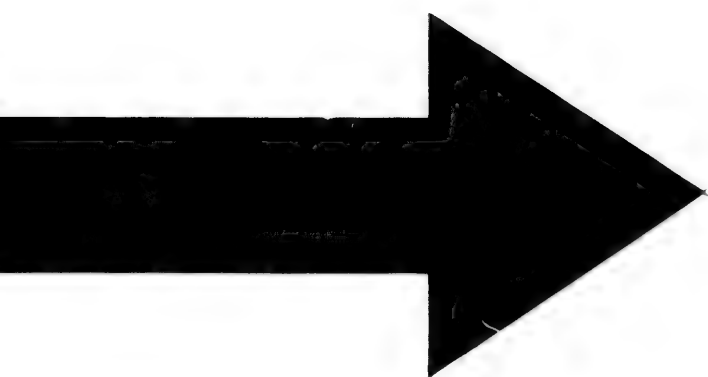
IX.

That, with every opposition *afin de conserver*, shall be fyled all *preuves littérales* to be adduced in support thereof, and the depositions of all witnesses, whose testimony may be necessary for the support of such opposition, and may legally be used in proof thereof, and in default of such deposition, an affidavit of the party, by whom such opposition shall be made, in the form prescribed, in the appendix to these rules and orders, under the number LXXX. duly sworn before one of the Justices of this Court, or some commissioner duly authorised to take and receive affidavits to be read and used in this Court; and that to every opposition shall be annexed a list of all the Exhibits hereby required and therewith fyled, under the signature of the Attorney *ad litem*, or other person, or persons by whom such opposition shall be made.

X.

That each and every writ of *fieri facias*, and each and every writ of





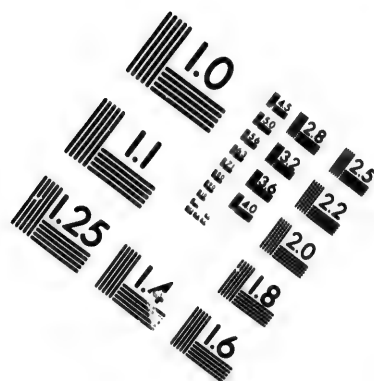
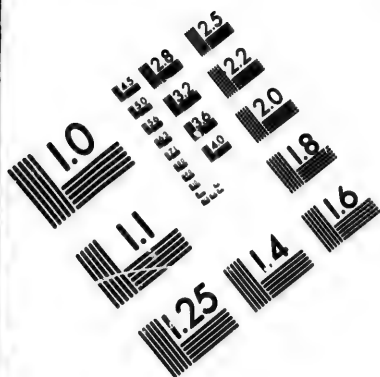
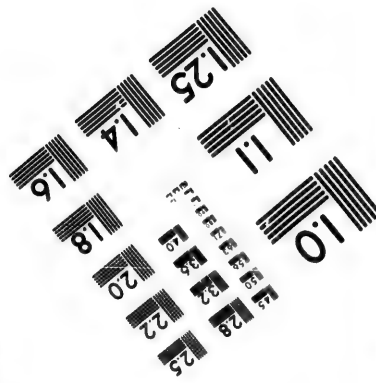
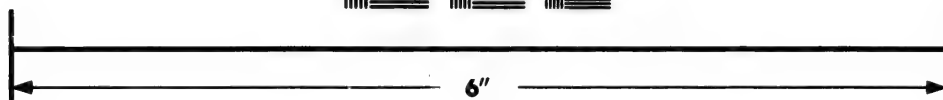
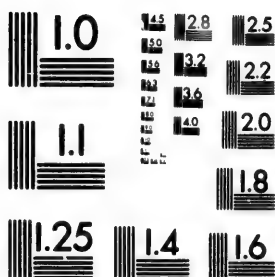


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venditioni exponas, under and by virtue of which any sale or sales of any goods, chattels, or estate, moveable, or immoveable shall be made, shall be fyled by the Sheriff, to whom such writ of *fieri facias*, or writ of *venditioni exponas* shall be addressed, in the office of the Prothonotary upon the sixth day next before the return day of such writ of *fieri facias*, or writ of *venditioni exponas* respectively, with all such oppositions as thereto shall relate and such return thereon indorsed, as circumstances may require; and after any such writ of *fieri facias*, or writ of *venditioni exponas* shall be so fyled, no opposition *afin de conserver*, which shall relate to such writ, or to the proceeds of any sale or sales made under and by virtue of such writ, shall be received, or fyled, without leave of the Court on payment of costs. XI.

That it shall be the duty of the Prothonotaries, in every case, to prepare and fyle upon the return day of every writ of *fieri facias*, or *venditioni exponas*, under which any sale or sales of

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any goods, chattels, real estate, moveable, or immoveable, shall be made, and with which any opposition *à conserved* shall be filed, as herein before is directed, a report of the order of distribution and collocation, or order of collocation or order of distribution (as the case may require) of the proceeds of such sale, or sales to and among the plaintiff and plaintiffs, opposant and opposants, defendant and defendants in such case, according to the several and respective rights apparent of such plaintiff or plaintiffs, opposant or opposants, defendant or defendants, and of all others interested in such order of distribution and collocation, or order of collocation, or order of distribution; and such report shall be so made and filed, whether the proceeds of such sale or sales shall or shall not have been received by the Sheriff making return of such writ or writs: it being hereby provided that nothing in this rule contained shall extend to any writ of *fiend facias*, or *renditioni exponas* which shall be returnable upon or after the second

170 OF JUDGM. AND EXEC. Sect. 12.

day of term, and that, in every such case, the report of the order of distribution and collocation, or order of collocation, or order of distribution (as the case may require) hereby directed shall be fyled on the tenth day of the vacation next ensuing the term in which such writ shall be returnable.

XII.

That communication of every report of distribution and collocation, report of collocation, or report of distribution, which shall be made by the Prothonotary and fyled, in any case, shall be had of course and taken by all parties interested therein, without motion, or other application to the Court for that purpose, and each and every party, in such case, who shall see fit to contest the order of distribution and collocation, order of collocation, or order of distribution, therein set forth and reported, shall make his contestation thereof in writing, and shall fyle the same in the office of the Prothonotary, at, or before the hour of six in the evening of the sixth day next after the day on which such report of distribution and

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collocation, report of collocation, or report of distribution shall be fyled; it being hereby expressly provided that no such contestation shall afterwards be received or fyled; and further that, in default of fyling such contestation, at the time, and in the manner hereby required, the party and parties, who shall neglect so to fyle such contestation, and each and every of them, shall be deemed and taken to have acquiesced in the report so fyled, and to have given his, her, or their consent, as the case may be, as well to the order of distribution and collocation, order of collocation, or order of distribution therein set forth and reported, as to all matters incident thereto and necessary for the support thereof, and to the entering up of judgment thereupon, according to the tenor of such report and of the order of distribution and collocation, order of collocation or order of distribution therein set forth.

XIII.

That in every case, in which a report

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172 OF JUDGM. AND EXEC. Sect 12.

of distribution and collocation, report of distribution, or report of collocation shall be made and fyled by the Prothonotary, and no contestation of such report or of the order of distribution and collocation, or order of distribution, or order of collocation, as the case may be, therein set forth and reported, shall be made and fyled at the time and in the manner herein before directed, such report and order of distribution and collocation, or order of distribution, or order of collocation, as the case may be, upon motion of the plaintiff or plaintiffs, in such case, shall be confirmed and homologated, and judgment according to such report and to the order of distribution and collocation, or order of distribution, or order of collocation therein set forth and reported, shall be entered up and recorded ; unless good and sufficient cause to the contrary shall be shown upon the second juridical day in term next after the day on which such motion shall be made and fyled ; it being hereby provided that service of the rule *nisi*, which shall be made on

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such motion shall not be required to be made upon the parties, in such case, or any or either of them, but that, at the diligence of the party obtaining such rule *nisi*, a copy thereof shall, on the day on which such rule shall be obtained, be publicly affixed in the Court-Hall, and that all parties whom it shall in any wise concern shall be held and bound to take notice thereof at *their peril*.

XIV.

That every contestation of any report of distribution and collocation, report of distribution, or report of collocation, shall be in the form prescribed, in the appendix to these rules and orders, under the number LXXXI; and every contestation of any claim or opposition shall be in the form prescribed, in the appendix to these rules and orders, under the number LXXXII.

XV.

That when, and so soon as any contestation of, any report of distribution and collocation, or report of distribu-

Part Of Judgm. AND Exec. Stat. 12.

tion, or report of collocation, shall in any case be fyled, the parties in such case, and each and every of them, shall be at liberty and entitled to set down such contestation, and the matter thereby contested, for final hearing, by inscribing such contestation upon the roll for final hearing in term, or in vacation, and giving notice thereof in term, or in vacation, to the party or parties whose right of collocation, or distribution according to such report shall thereby be contested, to the plaintiff or plaintiffs, or other party or parties (if such there be) prosecuting such report to judgment, and to the defendant and defendants in such case, (cases of default excepted) in the form prescribed, in the appendix to these rules and orders, under the number LXXXIII; and upon proof of the service of such notice, by affidavit or certificate, such contestation and the matter thereby contested, shall be finally heard, as soon thereafter as counsel can be heard: it being hereby provided that no such contestation or matter thereby contested

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ed shall be so heard upon the day of the service of the notice hereby required.

XVI.

That when, and so soon as contesta-
tion of any claim or opposition, shall in
any case be fyled, the rules and orders
hereby prescribed, with respect to
pleadings upon *demandes* in chief, and
each and every of them shall, in all
things, apply to, and be the rules and
orders of this Court, with respect to all
pleadings upon the claim or opposition
to which such contestation shall relate;
and the parties in such case shall, in all
other things, proceed in the manner and
form hereby prescribed for proceedings
upon *demandes* in chief, it being hereby
provided that the rules to plead, in every
such case, shall respectively be reckoned
from the day, on which the report of
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distribution, or report of Collocation
shall be fyled. /a

XVII.

That in every case, in which a con-
testation of any claim or opposition shall

176 OF JUDGM. AND EXEC. Sect. 12.

be made and fyled, answers and replications to the exceptions and *défenses* fyled with such contestation, as the case may require, by the parties, in such case, herein after mentioned, that is to say, on the behalf of the creditors of the defendant or defendants in such case in general, by the plaintiff and plaintiffs, or other party or parties (if such there be) prosecuting the report to Judgment, by the defendant or defendants in such case, on his, her, or their own behalf, and by the party or parties whose claim and opposition shall thereby be contested on his, her, or their own behalf, shall and may be received and fyled, and no others; it being hereby provided that this rule shall not authorise the plaintiff or plaintiffs, or other party or parties prosecuting such report to judgment, to answer, or reply for and on the behalf of the creditors, as above said, in any case in which the claim or opposition of such plaintiff or plaintiffs, party or parties prosecuting such report to judgment, shall by the contestation or pleadings in such case fyled, be contested; and that in every such case the

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answer or replication on the behalf of such creditors, shall be made and fyled by the first uncontested opposant, in such case, in point of date upon the Sheriff's Register.

XVIII.

That in every case, in which a report of distribution and collocation, or report of distribution, or report of collocation, shall be made and fyled of by the Prothonotary and a contestation such report, or of any claim or opposition, on which such report shall be founded, shall be made and fyled, such report of distribution and collocation, or report of distribution, or report of collocation, as the case may be, upon motion of the plaintiff or plaintiffs, in such case, or of any party or parties in such case shall be confirmed and homologated, as to all uncontested claims and oppositions, which shall precede in rank the claim or opposition which by such contestation shall be contested, and as to all other uncontested claims or oppositions (if any there shall be) which cannot be affected by such contestation,

178. Of Issues. AND EXEC. Sect. 18.

or by the issue raised in consequence thereof, and judgment according to such report as to the order of distribution and collocation, or order of distribution, or order of collocation therein set forth and reported, in so far as the same shall be so confirmed and homologated, shall be entered up and recorded ; unless good and sufficient cause to the contrary shall be shown, upon the second judicial day in term next after the day on which such motion shall be made and filed : it being hereby provided that service of the rule nisi, which shall be made on such motion, shall not be required to be made upon the parties, in such case, or any or either of them, but that, at the diligence of the party obtaining such rule nisi a copy thereof shall, on the day on which such rule shall be obtained, be publicly affixed in the Court-Hall, and that all parties, whom it shall in any wise concern, shall be held and bound to take notice thereof, at their peril.

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IT IS ORDERED ALSO,

That all rules and orders of practice heretofore made by the Court of common pleas of and for the District of Quebec, and adopted by this Court, and all rules and orders of practice heretofore made by this Court be, and the same, and each of them, are hereby rescinded and annulled.

AND LASTLY IT IS ORDERED,

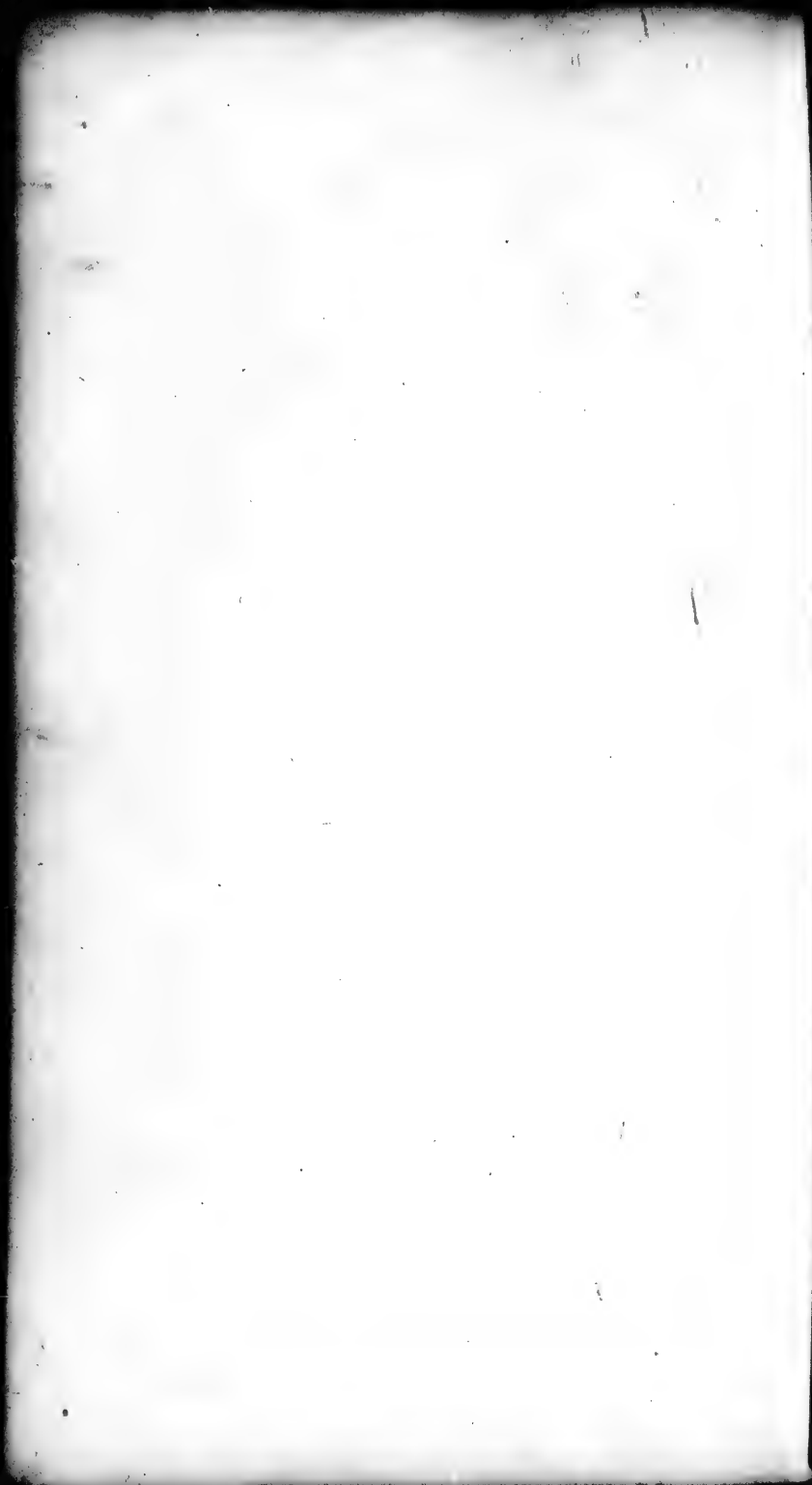
That these rules and orders of practice, and each and every of them respectively, do continue in force until, upon further consideration and experience, any alteration shall therein respectively be made.

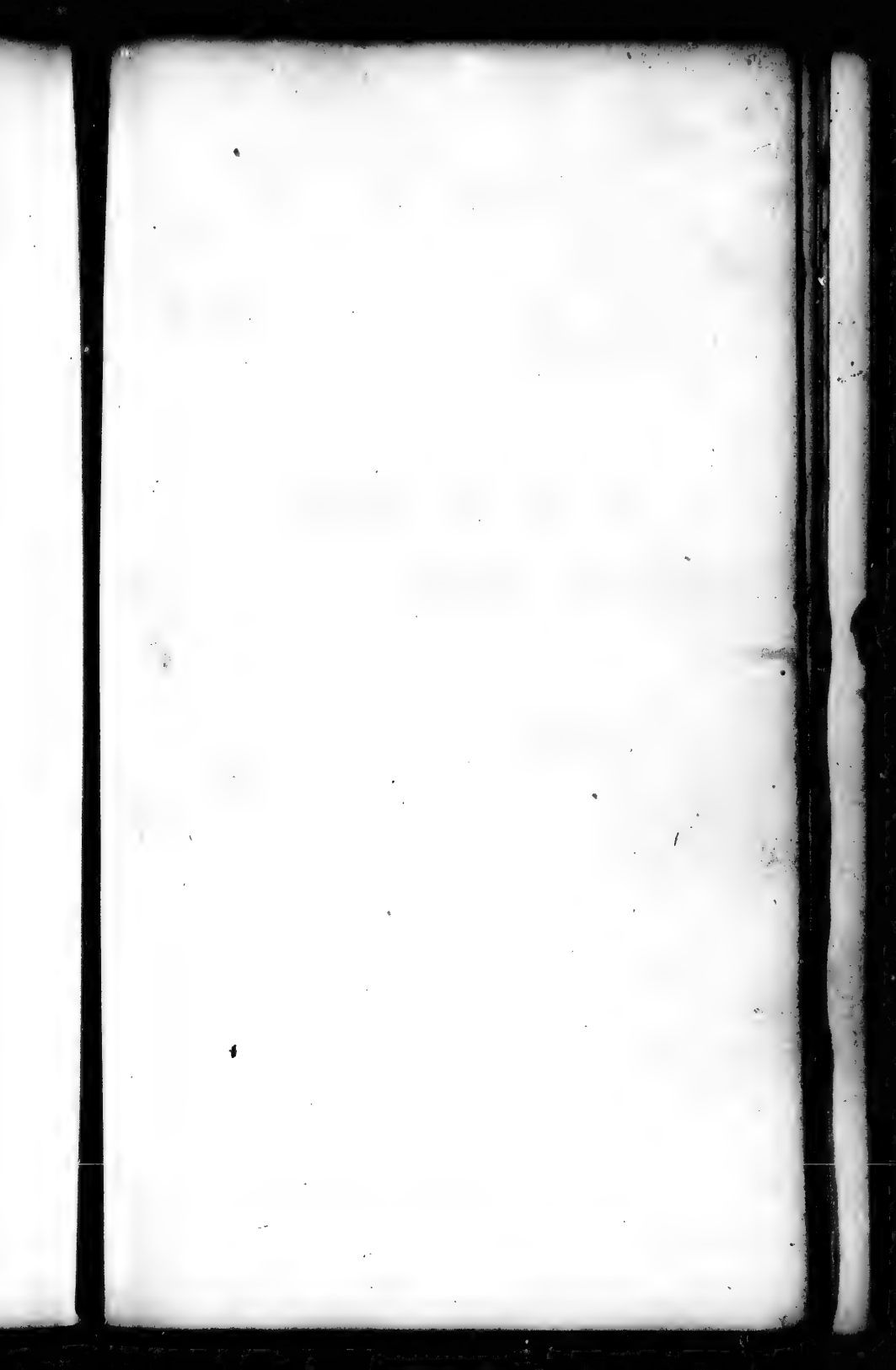
J. SEWELL. C J.

J. WILLIAMS J. B. R.

P. A. DE BONNE J. B. R.

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Corrected
J.S.

APPENDIX.

PRACTICAL FORMS.

§c. §c. §c.

NUMBER I. (Page 31)

*Affidavit and certificate of service of
notice and of copies of Pleadings.*

(Affidavit of service of notice.)

Province of Lower Canada,
District of Quebec,

In the
King's
Bench.

No. *John Thomas* Plaintiff
William Wilson Defendant

Corrected.
N.P.

A. B. of - - - in - - - - maketh
oath and saith that on the - - - day of
- - - - instant (or last) at the hour
of - - - in the forenoon (or afternoon)
at - - - he personally did serve C. D.
the Attorney for the Plaintiff (or De-
fendant) in this cause, (or the Plaintiff,
or Defendant, in this cause, as the case
shall require) with the original Notice
hereunto annexed, by delivering, then
and there, a true copy thereof to - - -
and then and there exhibiting to the
said - - - the said original notice.

Sworn the - - - - day of

Before me

(Plaintiff's certificate of service of notice)

Province of Lower Canada,
District of Quebec,

In the
King's
Bench,
Plaintiff

No. John Thomas

vs.
William Wilson Defendant

A. B. one of the sworn Bailiffs of his
Majesty's Court of King's Bench for

the District of Quebec upon his oath of Office doth hereby certify that, (as above.)

Affidavit of Service of Pleadings.

Province of Lower-Canada, } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { John Thomas Plaintiff
 vs.
 { William Wilson Defendant

A. B. of . . . in . . . maketh oath and saith that on the . . . day of . . . instant (or last) at the hour of . . . in the forenoon, (or afternoon) at . . . he personally did serve upon Mr. . . . the Attorney for the plaintiff (or defendant) in the cause, (or the plaintiff, or defendant, in this cause, as the case shall require) a true copy of the . . . (exception *déclinatoire* &c. naming the pleading) in this cause filed on the . . . day of . . . instant (or last) by delivering, then and there, the said copy duly certified to be such under the signature of Mr. . . . the Attorney for the plaintiff (or defendant) in

this cause (or otherwise as the case may require) to . . . and the said A. B. further saith that, upon the said copy so served was endorsed an exact duplicate in all things of the notice endorsed upon the said (*exception declinatoire* or other pleading, as the case shall require) so filed.

Sworn the . . . day of . . .

Before me,

Bailiff's Certificate of Service of Pleading.

Province of Lower-Canada, } In the
District of Quebec. } King's
Bench.

No. } John Thomas Plaintiff
vs. }

William Wilson Defendant

A. B. one of the Sworn Bailiffs of his Majesty's Court of King's Bench for the District of Quebec, upon his oath of office doth hereby certify that (as above.)

NUMBER II. (Page 31.)

*Certificate of the services of rules, orders,
judgments and writs of Subpœna.*

Province of Lower Canada, } In the
District of Quebec. } King's
Bench.

No. { John Thomas Plaintiff
vs
William Wilson Defendant

A. B. one of the Sworn Bailiffs of
His Majesty's Court of King's Bench
of and for the District of Quebec, upon
his oath of office, doth hereby certify
that on the --- day of --- last, (or
instant,) at the hour of --- in the
forenoon (or afternoon,) at ----- he
personally did serve C. D. the At-
torney for the plaintiff, (or defendant,) in
this cause, (or the plaintiff or defendant
in this cause, or J. W. a witness in
this cause, as the case shall require,)
with the original judgment, (rule, order,
or writ of Subpœna,) herunto annexed

by delivering, then and there, a true copy thereof to ----- and then and there exhibiting to the said ---- the said original judgment, rule, (order, or writ of Subpœna.)

NUMBER III. (Page 36)

Commission to take and receive affidavits.

Province of Lower Canada }
District of Quebec.

THE HONORABLE JONATHAN SEWELL his Majesty's Chief Justice of the Province of Lower Canada and one of the Justices of his Majesty's Court of King's Bench for the District of Quebec, and the Honorable *Jenkin Williams, Pierre Amable de Bonne*, and *James Ker* Justices of the said Court,

To ALL to whom these presents shall come, or may in any wise concern,
GREETING :

WHEREAS in and by the Provincial Statute, in such case lately made and

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provided, it is amongst other things enacted that, the Chief Justice of the Province and other the Justices of the Court of King's Bench for the District of Quebec or any two of them shall and may by one or more commissions under the seal of the said Court of King's Bench for the said District of Quebec, from time to time, as need shall require, empower what, and as many persons as they shall think fit and necessary, in the said District, to take and receive all and every such affidavit and affidavits, as any person or persons shall be willing and desirous to make before any of the persons so empowered in or concerning any cause, matter or thing depending, or thereafter to be depending, or in any wise concerning any of the proceedings to be had in the said Court.

NOW THEREFORE KNOW YE that we the said Justices, confiding in the integrity, loyalty and ability of - - - - of the parish of - - - - in the County of - - - - in the District of Quebec Esquire, under and by virtue of the aforesaid statute, have, and by

these presents do empower him the said
 - - - - - to take and receive,
 according pleasure, all and every such
 affidavit and affidavits, as any person or
 persons shall be willing and desirous to
 make before him the said - - - - -
 in, or concerning any cause, matter, or
 thing depending, or hereafter to be
 depending, or in any wise concerning
 any of the proceedings to be had, in the
 said Court of King's Bench for the
 District of Quebec.

IN TESTIMONY WHEREOF WE, unto
 these presents have caused to be affixed
 the seal of the said Court of King's
 Bench for the District of Quebec, and
 have hereunto set our hands and signa-
 tures, at the City of Quebec, in the
 said District of Quebec, in the said
 Province of Lower Canada the - - - - -
 day of - - - - - in the year of our Lord
 Christ one thousand eight hundred and
 - - - - - and in the - - - - - year of
 the reign of our Sovereign Lord
 GEORGE THE THIRD, by the - - - - - of
 GOD of the united kingdom of GREAT
 BRITAIN and IRELAND King, Defender
 of the faith.

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NUMBER IV. (Page 37.)

*Ordinary process ad respondendum, or
writ of summons.*

Province of Lower Canada }

District of Quebec }

GEORGE THE THIRD by the
grace of God of the united kingdom of
GREAT BRITAIN and IRELAND King,
defender of the faith.

**To the SHERIFF of our District
of Quebec, GREETING :**

We command you, within the limits
of your District, to summon A. B. - - -
of - - - - - (as described in the
Præcipe) to be and appear before us
in our Court of King's Bench for our
District of Quebec in our City of Que-
bec in our said District on - - - - -
the - - - - - day of - - - - - next,
(or instant,) to answer C. D. of - - - - -
(as described in the *Præcipe*) of the

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demande contained in the annexed declaration, and further to do and receive what, in our said Court before us, in this behalf, shall be considered ; and have you, then there, this writ.

Witness the Honorable - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench, at our said City of Quebec the - - - - day of - - - in the - - - year of our reign.

NUMBER V. (Page 37.)

Capias ad respondendum.

Province of Lower Canada }
District of Quebec, }

GEORGE THE THIRD by the grace of God of the united kingdom of GREAT BRITAIN and IRELAND King, defender of the faith.

TO THE SHERIFF of our District of Quebec, GREETING :

We command you that you take A. B. of - - - (*as described in the declaration,*) if he may be found in your District, and him safely keep, so that you may have his body before us, in our Court of King's Bench for our District of Quebec, in our City of Quebec, in our said District on - - - the - - - - day of - - - - next, (*or instant,*) to answer C. D. of - - - - (*as described in the declaration*) of the *demande* contained in the annexed declaration, and further to do and receive what, in our said Court before us, in this behalf, shall be considered, and have you, then there, this writ.

Witness the Honorable - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench, at our said City of Quebec the - - - day of - - - in the - - - - year of our reign.

NUMBER VI. (Page 37.)

Attachment or arrêt simple.

Province of Lower Canada \

District of Quebec, /

GEORGE THE THIRD by the
 grace of God of the united kingdom
 of GREAT BRITAIN and IRELAND King,
 defender of the faith.

TO THE SHERIFF of our District
 of Quebec GREETING :

We command you, at the instance of
 A. B. (*as described in the præcipe,*) to
 attach* . . . if the same shall be so
 found in your District, and the said

* *If the attachment be for debt generally, all and every the moveable effects, and Estate . . . of and belonging to C. D. (as described in the præcipe) and in the hands of him the said C. D. (or in the hand of E. F. of . . . and of G. H.*

----- so attached safely to hold, keep, and detain, in your charge and custody, until the attachment thereof, which shall be so made, under and by virtue of this writ, shall determine in due course of law.

We command you also to summon

of . . . , as described in the præcipe, if the property to be attached be in the hands of third persons, or of either of them) to the value of . . .

If the attachment be for a debt secured by privilege upon a particular object, one Crib of Oak square timber (*aut aliter as the case may require*) of and belonging to . . . of . . . (*as described in the præcipe*) and in the hands of . . . to the value of . . .

If the attachment be in revendication, one Gelding of a black colour &c. (*aut aliter as the case may require*) of the value of . . . of and belonging to him the said . . . (*as it is alleged*) and in the hands of . . . of . . . (*as described in the præcipe.*)

the said C. D. (*E. F. and G. H. and each of them*) to be and appear before us, in our Court of King's Bench for our District of Quebec, in our City of Quebec, in our said District, on . . . the . . . day of . . . next (*or instant*) the said C. D. then and there to answer the said A. B. of the *Demande* contained in the annexed declaration, and (*the said C. D. E. F. and G. H.*) then and there, to shew, if he (*they or either of them have,*) hath, or can say any thing why, in our said Court before us, the attachment, which shall be so made as aforesaid, should not be declared good and valid, and further to do and receive what, in our said Court before us, in this behalf, shall be considered; and in what manner you shall have executed this writ, then and there, certify unto us, with your doings thereon, and every of them; and have you, then and there, also this writ.

Witness the Honorable . . . our Chief Justice of and for our said Province of Lower-Canada, and one of the Justices of our said Court of King's Bench, at

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our said City of Quebec the . . . day of
 in the year of our reign.

NUMBER VII. (Page 37.)

Saisie arrêt, or attachment by seizure.

Province of Lower Canada }

District of Quebec. }

GEORGE THE THIRD by the
 grace of **GOD** of the united kingdom of
GREAT BRITAIN and IRELAND King,
 defender of the faith.

TO THE SHERIFF of our District
 of Quebec **GREETING :**

We command you, at the instance of
A. B. (*as described in the præcipe*)
 within the limits of your District, to
 attach, by seizure and arrest, in the
 hands of **C. D.** (*and E. F. as describ-*
ed in the præcipe) all each and every the
 sum and sums of money, rents, revenues,
 and other things whatsoever which he
 (*or they*) the said **C. D.** (*and E. F. or*
either of them) for and by reason of any

cause, or causes, whatsoever doth (or do now owe, or hereafter shall, will, or may owe, in any manner or way whatsoever unto G. H. - - - of - - - (as described in the præcipe, and I. K. - - - of - - - or unto either of them) and all and every the moveable effects and estate - - - of and belonging to the said G. H. (and I. K. or either of them) and in the hands, possession, custody, or power of the said C. D. (and E. F. or either of them) to the value of - - - in our name STRICTLY ENJOINING the said C. D. (and E. F. and each of them) not to pay or part with any sum or sums of money, rents, revenues, or other things, or moveable effects or estate - - - which under or by virtue of this writ shall be so attached, to any person or persons whatsoever for any cause or pretext whatsoever, but the same and every part thereof safely to hold, keep, and detain in his (or their, charge and custody until the attachment thereof, which shall be so made under and by virtue of this writ, shall determine in due course of law.

We command you also to summon

the said G. H. I. K. E. F. and C. D. and each of them to be and appear before us, in our Court of King's Bench for our District of Quebec in our City of Quebec, in our said District on - - - the - - - day of - - - next or instant the said G. H. and I. K. then and there to answer the said A. B. of the *demande* contained in the annexed declaration, and the said C. D. (and E. F. and each of them) then and there to declare upon oath what sum or sums of money, rents, revenues, or other things he (or they) the said C. D. (and E. F. or either of them) for or by reason of any cause, or causes whatsoever doth (or do) now owe or hereafter shall; will, or may owe in any manner or way whatsoever unto the said G. H. (and I. K. or either of them) and what effects moveable and estate . . . of or belonging to the said G. H. (and I. K. or either of them) he (or they) the said C. D. (and I. K. or either of them) now hath (or have) or shall or may have in the hands, possession, custody, or power of him (or them) the said G. D.

(and E. F. or either of them) to the value of L . . . and the said G. H. *(I. K. E. F.)* and C. D. then and there to shew, if they or either of them have or can say any thing why in our Court BEFORE us the attachment, which shall be so made as aforesaid, should not be declared good and valid, and he *(or they)* the said C. D. *(and E. F. and each of them)* be adjudged and condemned to pay and deliver to the said A B. the said sum ~~and~~ sums of money, rents, revenues, and other things which he *(or they)* the said C. D. *(and E. F. or either of them)* for or by reason of any cause, or causes whatsoever doth *(or do)* now owe, or hereafter shall, will, or may owe, in any manner or way whatsoever unto the said G. H. *(and I. K. or either of them)* to the value of the said sum of L . . . and further to do and receive what, in our said Court BEFORE us, in this behalf, shall be considered. And in what manner you shall have executed this writ, then and there, certify unto us with your doings thereon and every of them, and have you also; then and there this writ,

Witness the Honorable
 Chief Justice of and for our said Province of Lower Canada, and one of the Justices of our said Court of King's Bench, at our City of Quebec the . . . day of in the year of our reign.

NUMBER VIII. (Page 37.)

Saisie gagerie, or writ of distress.

Province of Lower Canada }

District of Quebec }

GEORGE THE THIRD by the grace of God of the united kingdom of **GREAT BRITAIN and IRELAND** King, defender of the faith.

TO THE SHERIFF of our District of Quebec, **GREETING :**

We command you at the instance of . . . (as described in the *præcipe*) to attach by seizure and arrest of *saisie gagerie* in the hands of (as described in the *præcipe*) all and every the moveable effects household goods and furniture which shall be found in . . . situate and being in . .

(describe the dwelling house, apartment &c. as the case may require) in your District and now in the occupation of the said, . . . in our name STRICTLY ENJOINING the said . . . /moveable effects household goods/furniture so attached safely to hold, keep, and detain in his charge and custody, until the attachment thereof which shall be so made, under and by virtue of this writ, shall determine in due course of law. We command you also to summon the said . . . to be and appear before us in our Court of King's Bench for our District of Quebec in our City of Quebec in our said District on . . the - - - day of - - - next or *instant* to answer the said - - - of the *demande* contained in the annexed declaration and then and there to shew if he hath, or can say any thing, why in our said Court BEFORE US the attachment which shall be so made as aforesaid should not be declared good and valid and further to do and receive what in our said Court BEFORE US, in this behalf, shall be considered And in what manner you shall have executed this writ, then and there, certify unto

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us with your doings thereon and every of them and have you also then and there this writ.

Witness the Honorable - - - - -
our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench at our said City of Quebec the - - day of - - - in the - - - - year of our reign.

NUMBER IX. (Page 37.)

Writ of summons en garantie formelle et simple.

Province of Lower Canada }

District of Quebec. }

GEORGE THE THIRD by the grace of God of the united kingdom of GREAT BRITAIN and IRELAND King, defender of the faith.

To THE SHERIFF of our District of Quebec GREETING :

We command you, within the limits of your District, to summon A. B. of . .

(as described in the *præcipe*) to be and appear before us, in our Court of King's Bench for our District of Quebec, in our City of Quebec, in our said District on - - - the - - - day of - - - next, (or instant) to answer C. D. of - - - (as described in the *præcipe*) of the *demande en garantie* contained in the annexed declaration, and further to do and receive what, in our said Court BEFORE US, in this behalf, shall be considered ; and have you, then there, this writ.

Witness the Honorable - - - - our Chief Justice of and for our said Province of Lower Canada, and one of the Justices of our Court of King's Bench, at our City of Quebec the - - - day of - - - in the - - - - year of our reign.

NUMBER X. (Page 38.)

Appearance and præcipe for process ad respondendum by Attorney ad litem.

Province of Lower Canada }

District of Quebec, }

John Thomas of the City of
Quebec in the District of Quebec
merchant - - - - - Plaintiff

vs.

William Wilson of the parish of Saint
John in the same District of Quebec
Yeoman - - - - - Defendant.

I appear for the above named John
Thomas and demand for the said John
Thomas a writ of - - - - - against
the said William Wilson, on *demande*
for - - - - - in an action - - - - -
returnable on - - - - - the - - - - -
day of - - - - - next, (*or instant*)

Quebec the - - - - - of - - - - - 18--

A. B.

NUMBER XI. (Page 39.)

*Appearance in person with an election of
a domicile and præcipe for process
ad respondendum.*

Province of Lower Canada }
District of Quebec, }

John Thomas of the City of
Quebec in the District of Quebec mer-
chant ----- Plaintiff.

vs,

William Wilson of the parish of Saint
John in the same District of Quebec
Yeoman ----- Defendant

I appear in person and do hereby
make my Election of a domicile at the
house now occupied by situate in
: street in the upper or (lower)
town of the City of Quebec, and I do
hereby demand a writ of against/
the said? on demande . . . for . . . in
an action returnable on
the . . . day of . . . instant or next

Quebec the . . . of . . . 18 . . .

JOHN THOMAS.

Made and signed by the said John
Thomas at the City of Quebec the . . .
of . . . 18 . . in the presence of us.

A. B Notary public.
C. D
E. F.

NUMBER XII. (Page 43.)

*Bail Bond to be taken by the Sheriff
upon a capias ad respondendum.*

Province of Lower Canada }

District of Quebec, }

Know all men by these presents that
we C. D. of - - - E. F. of - - - and
G. H. of - - - are held and firmly
bound unto - - - Esquire Sheriff of
the District of Quebec in the sum of - -
(double the sum sworn to and endorsed on
the capias ad respondendum) of current
money of the said Province of Lower
Canada to be paid to the said Sheriff, or
his certain Attorney, executors, cura-
tors, administrators, or assigns ; for
which payment well and truly to be
made we bind ourselves and each of us,
himself for and in the whole, our and
every of our heirs executors, curators
and administrators firmly by these pre-
sents signed with our signatures, sealed
with our seals, dated and delivered by

A a

us at the City of Quebec the - - - day of
- - in the year of our Lord Christ one
thousand eight hundred and - - -

WHEREAS the Body of the above
bound C. D. hath by the said Sheriff
been taken and arrested for the sum of
- - - current money aforesaid (*the sum
sworn to and indorsed on the capias*)
under and by virtue of a writ of *capias
ad respondendum* issued out of his Ma-
jesty's Court of King's Bench for the
District of Quebec against the said C.
D. in a suit or cause there lately insti-
tuted by A. B. of - - - (*as described in
the declaration*) against the said C. D.
upon a *demande* for - - - in an action - -
and the said E. F. and G. H. have
thereupon, in the said suit or cause,
become Bail to the said Sheriff for the
said C. D.

NOW THEREFORE THE CONDITION OF
THIS OBLIGATION is such that if the said
C. D. E. F. and G. H. or any or either
of them, on or before the - - - day of - - -
next (*the tertius dies post*) in the said
Court of King's Bench for the Dis-
trict of Quebec, according to the course

and practice of the said Court shall, in the said suit or cause, put in, or cause to be put in, good and sufficient special Bail, or Bail to the action of the said A. B. in the said sum of - - - (*the sum sworn to and indorsed on the Capias*) and in the further sum of L 30. for costs, or if the said C. D. in default of such special Bail or Bail to the action as aforesaid, on or before the said - - - day of - - - next (*the tertius dies post*) according to the course and practice of the said Court shall surrender himself, or be surrendered by the said E. F. and G. H. into the custody of the Sheriff of the said District of Quebec, for the time being, in discharge of his Bail to the said Sheriff, or if the said C. D. E. F. and G. H. or any or either of them on, or before the said - - - day of - - - (*the tertius dies post*) shall well and truly pay and satisfy unto the said - - - the said sum of - - - (*the sum sworn to and indorsed on the Capias*) with such costs to the said A. B. as shall be taxed, then and in either case

this obligation to be void, otherwise to remain in full force and virtue.

Signed Sealed and delivered }
in presence of - - - - - /

NUMBER XIII. (Page 45.)

Appearance for a defendant by Attorney.

Province of Lower Canada	}	<i>In the</i>
District of Quebec		<i>King's Bench.</i>

No.	{ John Thomas	Plaintiff
	<i>vs.</i>	
	{ William Wilson	Defendant

I appear for the defendant William Wilson.

Quebec the - - - of - - - 18

A. B.

NUMBER XIV. (Page 46 47.)*Appearance for a defendant in person.*

Province of Lower Canada } *In the*
 District of Quebec, } *King's*
 Bench

No. / John Thomas - - - Plaintiff.
 vs.
 \ William Wilson Defendant

I William Wilson appear in person,
 and do hereby make my Election of a
 domicile at the house now occupied by
 - - - - - situate in - - - - - street, in the
 upper (or lower) town of the City of
 Quebec.

Quebec the - - - of - - - 18 - - -

WILLIAM WILSON.

NUMBER XV. (Page 49.)*Notice of Special Bail.*

Province of Lower Canada } *In the*
 District of Quebec. } *King's*
 Bench

No. { John Thomas - - - Plaintiff.
vs.
{ William Wilson - - Defendant.

SIR,

Take notice that special Bail will be put in for the defendant, in this cause, on --- the --- day of --- instant, in open Court ; and the names and additions of such Bail are A. B. of --- and C. D. of ---

Dated the - - - day of - - - 18 - - -

Yours &c.

G. H.

Attorney for the defend.

To Mr. -----

Attorney for the Plaintiff

NUMBER XVI. (Page 49)

Acknowledgment of Special Bail.

Province of Lower Canada } *In the*
District of Quebec, } *King's*
 } *Bench.*

No. { John Thomas Plaintiff.
 vs.
 { William Wilson - - Defendant.

We A. B. of . . . and C D. of
do jointly and severally acknowledge
ourselves to be Spécial Bail in this
cause for the above named William
Wilson the defendant, and to owe and
be indebted unto John Thomas the
plaintiff, in this cause, in the sum of
---- (*the sum sworn to and indorsed
on the capias ad respond.*) with L. 30.
for costs, to be levied upon our several
goods and chattels, lands and tenements,
if default be made in the following
undertaking, that is to say, we do
jointly and severally undertake that, if
judgment in this action shall be in favor
of the said John Thomas against the
said William Wilson, he shall pay and
satisfy to the said John Thomas the
costs and condemnation, according to
the said judgment, or render himself,
or be rendered by us into the custody of
the Sheriff of the District of Quebec,
Within one Calendar month from the

day of the date of such judgment, according to law, and the course and practice of this Court.

Dated the . . . day of . . . 18 . . .

A. B.

C. D.

Taken and acknowledged, in open Court, before us, this . . . day of . 18. .

I. W.

I. K.

NUMBER XVII. (Page 49.)

Justification of Special Bail.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec,	

No.	{	John Thomas Plaintiff.
		^{vs.} William Wilson Defendant.

E. F. of - - - and G. H. of - - -
SPECIAL BAIL for the defendant, in this

ent, ac-
urse and

A. B.
C. D.

in open
of 18.

1 W.
I. K.

e 49.)

Bail.

In the
King's
Bench.

Plaintiff.

Defendant.

of-----
ant, in this

APPENDIX.

215

cause, severally make oath and say, and
first, this deponent E. F. for himself
saith that he is a house keeper in ---
in the District of - - in the Province
of Lower Canada, and that he is worth
the sum of - - - (~~double the sum sworn~~ / 8
to) over and above what will pay all
his debts; and this deponent G. H. for
himself saith that he is a house keeper
in --- in the District of ... in the
said Province, and is worth the sum
of ... over and above what will pay
all his debts.

E. F.
G. H.

Sworn the ... day of ... 18 ...

NUMBER XVIII. (Page 52.)

Writ of Attachment for contempt.

Province of Lower Canada {

District of Quebec. }

GEORGE THE THIRD by the
grace of God of the united Kingdom

Bb

of GREAT BRITAIN and IRELAND King,
defender of the faith.

TO THE CORONER of our District
of Quebec GREETING :

We command you that you attach
C. D. Sheriff of our said District, so
that you may have him before us, in
our Court of King's Bench for our said
District, in our City of Quebec, in our
said District on - - - the - - - day of - -
instant (*or next*) to answer to us for
certain trespasses and contempts done
and committed in our said Court before
us ; and further to do and receive what,
in our said Court before us, in this
behalf, shall be considered.

Witness the Honorable - - - - - our
Chief Justice of and for our said Pro-
vince of Lower Canada, and one of the
Justices of our said Court of King's
Bench, at our City of Quebec the - - -
day of - - - in the - - - year of our reign.

NUMBER XIX. (Page 54.)

Minute of render in discharge of Bail.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec.	

No. { John Thomas - - - - Plaintiff
 vs.
 { William Wilson Defendant.

William Wilson the above named defendant this day did render himself (*or was rendered by &c.*) in discharge of his Bail to the Sheriff (*or his Special Bail*) in this cause, and was thereupon committed by the Court (*or me*) to the custody of the Sheriff of the District of Quebec, there to remain until thence delivered in due course of law. (*if before a Judge in vacation add*)

Dated the - - - day of - - 18 . .

J. W.
J. K. B.

NUMBER XX. (Page 65 66.)

*Notice of rule to plead, to answer and
to reply.*

Notice of the common rule to plead,

No. *In the King's Bench,*

John Thomas Plaintiff.

^{78.}
William Wilson Defendant. }

Declaration
action/for

SIR,

Take notice that the declaration
within written will be fyled on ---
the --- day of --- instant (*or next*)
and that the common rule to plead in
this cause to the action will expire on
the sixth day next thereafter (*or
twentieth*)

Dated the --- day o --- 18 ---

A. B.

Attorney for Plaintiff

To William Wilson the
defendant in this cause. }

Notice of common rule to answer or
reply.

No. In the King's Bench.

John Thomas Plaintiff

vs.

William Wilson Defendant

Exception déclinatoire (or *aliter* as
the case may require)

SIR,

Take notice that the Exception déclinatoire within written (or *aliter* as the case may require) was this day fyled, and that the common rule to answer (or reply) thereto will expire on the third (or second) day next after this day.

Dated the - - - day of . . . 18 . . .

D. D.

Attorney for plaintiff (or defendant.)

To Mr. - - - Attorney for the
plaintiff (or defendant)

Note. If the pleading be the General answer, or a replication, the words, *and that the common rule to answer, or reply, thereto will expire on the third, or second day, next after this day,* must be omitted.

NUMBER XXI. (Page 76.)

Answers to exceptions.

General answer to exceptions déclinatoires, and to exceptions à la forme.

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec.		

No.	{	John Thomas	vs.	Plaintiff.
		William Wilson		Defendant.

And the said John Thomas by this his general (or special) answer to the exception *déclinatoire* (or exception *péremptoire à la forme*) of the said William Wilson in this cause fyled saith that in this cause the Court of our Lord the King, now here, by law can pro-

ced and compel him the said William Wilson to answer to the *demande* of him the said John Thomas in the declaration of him the said John Thomas in this cause tyled contained, *and by law also can take cognizance of the action of him the said John Thomas in this behalf** And that by reason of anything by the said William Wilson in the said exception alledged, the writ and process *ad respondendum* in this cause issued, and the declaration of the said John Thomas in this cause tyled, nor can either of them by the judgment of this Honorable Court be declared null, or of no effect, because he saith, that the allegations of the said William Wilson and the matters and things in the said exception set forth and contained, and each and every of them is and are wholly and altogether untrue and unfounded in fact and in law. Wherefore

* In answers to exceptions *à la forme* these words *and by law also can take cognizance of the action of him the said John Thomas in this behalf*, must be omitted.

the said John Thomas humbly prays that for the causes aforesaid, by the judgment of this Honorable Court the said exception of the said William Wilson, be hence dismissed with costs, and the parties in this cause ordered to proceed therein according to the course and practice of this honorable Court, persisting in the conclusions of his said declaration, and further praying, as therein and thereby he hath already prayed.

General answer to exceptions dilatoires.

Province of Lower Canada	} <i>In the</i>
District of Quebec.	
	} <i>Bench.</i>

No.	{	John Thomas	Plaintiff.
		vs.	
	{	William Wilson	Defendant

And the said John Thomas by this his general (or special) answer to the exception dilatoire of the said William Wilson in this cause fyled saith, that in this cause the Court of our Lord the

King, now here, can *at this time* proceed, and compel him the said William Wilson *at this time* to answer unto the *demande* of him the said John Thomas in the declaration of him the said John Thomas in this cause fyled contained; and that by reason, c^y any thing by the said William Wilson in the said exception alledged, the proceedings in this cause cannot by the judgment of this honorable Court be staid until - - or for any time whatever, because he saith that the allegations of the said William Wilson and the matters and things in the said exception set forth and contained, and each and every of them, is and are wholly and altogether untrue and unfounded in fact and in law.

Wherefore the said John Thomas humbly prays, that for the causes aforesaid by the judgment of this Honorable Court, the said exception of the said William Wilson be hence dismissed, with costs, and the parties in this cause ordered to proceed therein according to the course and practice of this Honorable Court, persisting in the conclusi-

ons of his said declaration, and further praying, as therein and thereby he hath already prayed.

General answer to exceptions péremptoires en droit, temporary and perpetual.

Province of Lower Canada	} <i>In the</i> <i>King's</i> <i>Bench.</i>
District of Quebec.	

No.	{ John Thomas	Plaintiff.
	vs.	
	{ William Wilson	Defendant.

And the said John Thomas by this his general (or special) answer to the temporary exceptions péremptoires en droit (or the perpetual exceptions péremptoires en droit) of the said William Wilson in this cause fyled, saith, that he the said John Thomas by law can at this time have and maintain his action against the said William Wilson for and by reason of the matters and things in the declaration of him the said John Thomas in this cause fyled,

set forth and alledged, and that by reason of any thing by the said William Wilson in his said exception alledged, The action of him the said John Thomas, in this behalf, cannot by the judgment, of this Honorable Court be (*for the present*) hence dismissed because he saith * that the allegations of the said William Wilson and the matters and things in the said exception set forth

* The captions and conclusions of the answers under this number are to be used also when the answers are special, in such cases the particular facts on which it is intended to rely, by way of answer to the exception, must be libelled distinctly as to time, place, person, and circumstance, after the words *because he saith that* and the respondent will afterwards proceed in these words, *vz. All which allegations the said John Thomas doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove and maintain when and as this Honorable Court shall direct.*

and contained, and each and every of them, is and are wholly and altogether untrue and unfounded in fact and in law.

Wherefore the said John Thomas humbly prays that for the causes aforesaid by the judgment of this honorable Court, the said exception of the said William Wilson be hence dismissed, with costs, persisting in the conclusions of his said declaration and further praying, as therein and thereby he hath already prayed.

And the said John Thomas, lastly, saith that the allegations of the said William Wilson, and the matters and things in the said exception set forth and contained, and not herein before well and sufficiently answered, and each and every of them, is and are wholly and altogether untrue and unfounded in fact and in law.

Wherefore &c.----(as above.)

NUMBER XXII. (Page 79.)

*Certificate that no plea to the action hath
been fyled.*

Province of Lower Canada	}	<i>In the King's Bench</i>
District of Quebec.		

No.	{	John Thomas	Plaintiff,
		William Wilson	Defendant,

vs.

I do hereby certify that the common
(or enlarged) rule to plead to the action,
in this cause, expired on the - - - day of
- - - instant, (or last) that it hath not
been in any way (or further) enlarged,
and that no plea to the action hath been
fyled in this cause.

Dated - - - day of - - 18 - - -

NUMBER XXIII. (Page 80.)

Demand of a Plea to the Action.

Province of Lower Canada	}	<i>In the King's Bench,</i>
District of Quebec.		

No. { John Thomas - - - - Plaintiff
 vs.
 William Wilson Defendant.

I demand in this cause a plea to the action.

Dated - - - day of - - - 18 - - -

A. B. Attorney for the Plaintiff.

To Mr. C. D. Attorney
 for the Defendant. /

NUMBER XXIV. (Page 81.)

Acte of Foreclosure.

Province of Lower Canada } *In the*
 } *King's*
 District of Quebec. } *Bench.*

No. { John Thomas Plaintiff
 vs.
 William Wilson Defendant

I do hereby foreclose William Wilson the defendant in this cause from the right of fying a plea or pleas to the ac-

tion in this cause.

Dated - - - day of - - - 18 - - -

A. B. Attorney for the
Plaintiff.

NUMBER XXV. (Page 82.)

General Replication.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec.	

No.	{ John Thomas	Plaintiff
	{ William Wilson	Defendant

And the said William Wilson by this his replication to the special answer of the said John Thomas to the (*exception déclinatoire, or exception péremptoire à la forme, or exception dilatoire, or temporary exception péremptoire en droit, or, perpetual exception péremptoire en droit*) of him the said William Wilson in this cause fyled saith, that the allegations of the said William Wilson and the matters and things in his said ex-

- Plaintiff

Defendant.

plea to the

- - -

ney for the
tiff.

age 81.)

e.

*In the
King's
Bench.*

Plaintiff

Defendant

am Wilson
from the
to be ac-

ception set forth and contained, and each and every of them, is and are wholly and altogether true and well founded in fact and in law ; and that the allegations of the said John Thomas and the matters and things in the said answer of him the said John Thomas to the said exception set forth and contained, and each and every of them, is and are wholly and altogether untrue and unfounded in fact and in law.

Wherefore the said William Wilson persits in the conclusions of his said exception and humbly prays, as therein and thereby he hath already prayed:

Filed for and on the behalf of the above named William Wilson according to the 29th. rule of the 7th. Section of the orders and rules of practice. By me.

A. B. Attorney for the above named John Thomas.

NOTE. *The replication to a defense en fonds en droit will always be general as follows.*

And the said John Thomas by this his replication to the *défense au fonds en droit* of the said William Wilson in this cause fyled saith that the allegations of him the said John Thomas and the matters and things in the declaration of him the said John Thomas in this cause fyled set forth and contained and each and every of them, is and are wholly and altogether well founded in law and sufficient therein, for him the said John Thomas to have and maintain against the said William Wilson the conclusions in the said declaration taken and each and every of them, and the action of him the said John Thomas in this behalf.

Wherefore the said John Thomas persists in the conclusions of his said declarations and humbly prays, as therein and thereby he hath already prayed.

Dated - - - day of - - - 18 - - -

The Replication to a Defense au fonds en fait will also be general always and as follows.

And the said John Thomas by this

D d

his Replication to the *défense au fonds en fait* of the said William Wilson in this cause syled, saith that the allegations of him the said John Thomas and the matters and things in the declaration of him the said John Thomas in this cause syled set forth and contained and each and every of them is and are wholly and altogether true and well founded in fact,---* And that he the said William Wilson did undertake and promise in manner and form as the said John Thomas hath in and by his said declaration alledged and complained against him the said William Wilson *

Wherefore the said John Thomas persists in the conclusions of his said declaration and humbly prays as therein and thereby he hath already prayed.

Dated - - - day of - - 18 - - -

** These parts of the replication must be varried according to the defense.

NUMBER XXVI. (Page 84.)

Declaration.

Province of Lower Canada

In the

District of Quebec.

*King's**Bench.*

John Thomas

Plaintiff

vs.

William Wilson

Defendant

TO THE HONORABLE THE JUSTICES of
his Majesty's Court of King's Bench for
the District of Quebec.

John Thomas of the City of Quebec
in the County of Quebec in the District
of Quebec merchant, complaining of
William Wilson of the Parish of Saint
John in the County of Cornwallis in the
same District of Quebec yeoman, by this
his declaration doth humbly represent,

That [Set out the facts of the case
distinctly as to time, place, person, and
circumstance.]

All which allegations the said John
Thomas doth hereby aver to be true and

well founded in fact and in law, and the same will verify, prove, and maintain, when and as this honorable Court shall direct.

Wherefore the said John Thomas prays the process of this honorable Court, and that the same may issue to compel the said William Wilson to be and appear in this honorable Court on --- the --- day of --- next (*or instant*) to answer unto him the said John Thomas of the *demande* contained in this declaration, and that for the causes aforesaid by the Judgment of this honorable Court--- [*here set forth the legal conclusions of the action.*]

NUMBER XXVII. (Page 84.)

Exception declinatoire.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec.	

No.	{	John Thomas - - - - Plaintiff
		<i>vs.</i>
	{	William Wilson Defendant.

And the said William Wilson by this

and the
maintain,
urt shall

Thomas
e Court,
compel
and ap-
--- the
) to an-
omas of
declara-
esaid by
Court---
usions of

84.)

In the
King's
Bench.

Plaintiff
endant.
by this

his *exception déclinatoire* saith, that, in this cause, the Court of our Lord the King, now here, by law cannot proceed, nor compél him the said William Wilson to answer in any manner unto the *demande* of him the said John Thomas in the declaration of him the said John Thomas in this cause fyled contained, nor in any way take cognizance of the action of him the said John Thomas, in this behalf, if any he hath against the said William Wilson, for or by reason of the matters and things set forth and alledged in the said declaration, or of any or either of them because he saith,

That [*Here libel the facts which constitute the ground of the exception distinctly as to time, place, person and circumstance **]

All which allegations the said Wil-

* If there be a second distinct ground of exception, it must be introduced after the first has been completely set forth by the following words viz. *And the said William Wilson further saith that &c.* and be libelled separately, and so on, if there be more.

William Wilson doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove and maintain, when and as this honorable Court shall direct.

Wherefore the said William Wilson humbly prays that for the causes aforesaid by the Judgment of this honorable Court the writ and process *ad respondendum* in this cause issued, and the declaration of him the said John Thomas in this cause fyled, and each of them be declared null and of no effect whatever and the said William Wilson hence dismissed, with costs.

Dated - - - day of - - - 18 - - -

NUMBER XXVIII. A. (Page 84.)

Exception peremptoire à la forme.

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec.		

No	{	John Thomas	vs.	Plaintiff.
		William Wilson		Defendant.

And the said William Wilson by this

his *exception peremptoire à la forme*, saith, that, in this cause, the Court of our Lord the King, now here, by law cannot further proceed nor compel the said William Wilson to answer in any manner unto the *demande* of him the said John Thomas, in the declaration of him the said John Thomas in this cause fyled & contained, because he saith,

That [*Here libel the facts which constitute the ground of the exception distinctly as to time, place, person and circumstance **]

All which allegations the said William Wilson doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove and maintain when and as this honorable Court shall direct.

Wherefore the said William Wilson

* If there be a second distinct ground of exception, it must be introduced, after the first has been completely set forth by the following words viz. *And the said William Wilson further saith that &c.* and be libelled separately, and so on, if there be more.

*John
Thomas*

humbly prays, that for the causes afore-
said by the Judgment of this honorable
Court the writ and process *ad respon-*
dendum in this cause issued, and the de-
claration of him the said John Thomas
in this cause fyled, and each of them be
declared null and of no effect whatever,
and the said ~~william~~^{John} ~~wilson~~^{Thomas} hence dis-
missed, with costs.

NUMBER XXVIII. B. (Page 84.)

Exception dilatoire.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec.	

No.	{ John Thomas	Plaintiff
	{ William Wilson	
	vs.	
	{	Defendant

18 And the said william wilson, by this
his *exception dilatoire* saith, that, in this
cause, the Court of our Lord the
King, now here, by law cannot, *at this*
time, further proceed, nor compel him
the said william wilson, *at this time*, to

answer in any manner unto the demand of him the said John Thomas in the declaration of him the said John Thomas in this cause fyled contained, because he saith

That [*Here libel the parts which constitute the ground of the exception distinctly as to time, place, person, and circumstance.**]

All which allegations the said William Wilson doth hereby aver to be true and well founded in fact and in law, and the same, will verify, prove, and maintain, when and as this honorable Court shall direct.

Wherefore the said William Wilson humbly prays, that, for the causes aforesaid, by the judgment of this honorable Court all proceedings in this

* If there be a second distinct ground of exception, it must be introduced after the first has been completely set forth by the following words. viz.
"And the said William Wilson further saith that &c" and be libelled separately and so on, if there be more.

E e

cause be staid until &c. --- [*here insert the day (or event) to which the delay demanded by law may extend*] With costs

NUMBER XXIX. (Page 85.)

Temporary exception péremptoire en droit.

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec.		

No.	{	John Thomas - - - - Plaintiff
		vs.
	{	William Wilson Defendant.

And the said William Wilson for answer unto the *demande* of him the said John Thomas in the declaration of him the said John Thomas in this cause filed contained, not confessing or acknowledging any of the matters and things in the said declaration set forth and

alleged, to be true, * by this his temporary exception *peremptoire en droit* saith, that the said John Thomas by law cannot, at this time, have or maintain his action against him the said William Wilson (if any he hath) for or by reason of the said matters or things in the said declaration set forth and alleged, or of any or either of them, because he saith

That &c. [*here libel the facts which constitute the ground of the exception distinctly as to time; place, person, and circumstance. †*]

* If it is intended to admit any matter, add here the words, *save and except that &c.* then state what it is intended to admit in the words used in the declaration, to allege it.

† If there be a second distinct ground of exception, it must be introduced after the first has been completely set forth, by the following words viz. *and the said William Wilson further saith that &c.* and be libelled separately, and so on, if there be more.

All which allegations the said William Wilson doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove, and maintain, when and as this honorable Court shall direct.

Wherefore the said William Wilson humbly prays that, for the causes aforesaid, by the Judgment of this honorable Court, the action of him the said John Thomas, in this behalf, be *for the present* hence dismissed, with costs.

Dated the - - day of - - - 18 - - -

NUMBER XXX. (Page 85.)

Perpetual exception peremptoire en droit.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec.	

No.	{ John Thomas	Plaintiff
	{ William Wilson	Defendant
	<i>vs.</i>	

And the said William Wilson for answer unto the *demande* of him the said

John Thomas in the declaration of him the said John Thomas in this cause filed contained, not confessing or acknowledging any of the matters and things in the said declaration set forth and alledged to be true, * by this his *perpetual exception peremptoire en droit* saith that, the said John Thomas, by law, cannot at any time have or maintain any action against him the said William Wilson, for or by reason of the said matters or things in the said declaration set forth and alledged, or of any or either of them, because he saith,

That [*Here libel the facts which constitute the ground of the exception distinctly as to time, place, person, and circumstance.†*]

* If it is intended to admit any matters, add here the words *save and except that* ... and then state what it is intended to admit, in the words used in the declaration, to alledge it.

† If there be a second distinct ground of exception, it must be introduced after the first has been completely set forth, by the following words viz. *and the said*

All which allegations the said William Wilson doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove, and maintain, when and as this honorable Court shall direct.

Wherefore the said William Wilson humbly prays that, for the causes aforesaid, by the Judgment of this honorable Court, the action of him the said John Thomas, in this behalf, be hence dismissed, with costs.

Dated the - - - day of - - 18 - - -
NUMBER XXXI. A. (Page 85. & 86.

Defense au fonds en droit.

Province of Lower Canada	} <i>In the</i> <i>King's</i> <i>Bench.</i>
District of Quebec.	

William Wilson further saith that &c.
and be libelled separately, and so on, if
there be more

No. { John Thomas Plaintiff.
 vs.
 William Wilson Defendant.

And the said William Wilson for answer *au fonds* to the *demande* of him the said John Thomas, in the declaration of him the said John Thomas in this cause fyled contained, not confessing or acknowledging any of the matters and things in the said declaration set forth and alledged to be true, by this his *defenses au fonds en droit* saith, that the allegations of the said John Thomas and the matters and things in the said declaration set forth and contained, and each and every of them, is and are wholly and altogether unfounded in law, and not sufficient therein for the said John Thomas to have or maintain against him the said William Wilson, the conclusions in the said declaration taken, or any or either of them, or the action of him the said John Thomas, in this behalf, against him the said William Wilson, and this he is ready to verify.

Wherefore the said William Wilson humbly prays that, by the judgment of this honorable Court, the action of him the said John Thomas, in this behalf, be hence dismissed with costs.

Dated the - - - day of - - - 18 - -

☞ For the form of the replication to a defense *au fonds en droit* vide ante No XXV.

NUMBERXXXI. B. (Page 85 & 89.)

Defense au fonds en fait.

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec.		

No.	{	John Thomas	vs.	Plaintiff.
		william Wilson		Defendant.

And the said william wilson for answer *au fonds*, to the *demande* of him the said John Thomas in this cause fyled contained, by this his *defense au fonds en fait*, saith, that the allegations of the said John Thomas and the mat-

*in the Declaration of him the
said John Thomas*

ters and things in the said declaration set forth and contained, and each and every of them, is and are wholly and altogether unfounded in fact and untrue, and that [*he the said William Wilson* * *did not undertake or promise in manner or form as the said John Thomas hath in and by his said declaration alledged and complained against him the said William Wilson.*]

Wherefore the said William Wilson humbly prays, that by the judgment of this honorable Court, the action of him the said John Thomas in this behalf be hence dismissed with costs.

* This part of the defense *au fonds en fait* must be varied, from *non assumpsit*, to *nil debet*, *non est factum*, *non detinet*, *non infregit conventionem*, not guilty, &c. according to the nature of the demand.

☞ For the form of the replication to a defense *au fonds en fait*, vide ante No. XXV.

NUMBER XXXII. (Page 86.)

*Declaration of an incidental cross
demande.*

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec.		

In the cause of

No.	{	John Thomas - - - - Plaintiff
		<i>vs.</i>
	{	William Wilson Defendant.

TO THE HONORABLE THE JUSTICES of
his Majesty's Court of King's Bench for
the District of Quebec.

William Wilson above named com-
plaining of the said John Thomas by this
*his declaration of incidental cross de-
mande* doth humbly represent.

That [here set forth the facts on
which the incidental cross demande is
founded, distinctly as to time, place,
person, and circumstance.]

All which allegations the said Wil-
liam Wilson doth hereby aver to be

true and well founded in fact and in law, and the same will verify, prove, and maintain, when and as this Honorable Court shall direct.

Wherefore, the premisses considered, the said William Wilson humbly prays that, for the causes aforesaid, by the judgment of this Honorable Court [*here set forth the legal and peculiar conclusions of the demande*] with costs.

NUMBER XXXIII. (Page 88.)

Declaration of a demande in Intervention.

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec.		

In the cause of

No.	{	John Thomas	Plaintiff.
		vs. william Wilson	Defendant.

TO THE HONORABLE THE JUSTICES of
his Majesty's Court of King's Bench for

the District of Québec. Richard Roe of the parish of St. Thomas in the County of Devon in the District of Québec Esquire complaining of . . by this his *declaration of demande in intervention* doth humbly represent. That [*here set forth the facts on which the intervention is founded, distinctly as to time, place, person and circumstance*] All which allegations the said Richard Roe doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove, and maintain, when and as this honorable Court shall direct.---- Wherefore, the premisses considered, the said Richard Roe humbly prays, that he be admitted an intervening party in this cause in this Honorable Court.---That your Honors will be pleased to grant *acte* that, for causes of intervention, in this behalf, he pleads the allegations, matters and things herein before set forth and contained, and that, for the causes aforesaid, by the judgment of this Honorable Court [*here set forth the legal and peculiar conclusions*] with costs,

NUMBER XXXIV. (Page 88 & 89.)

Declaration in Evocation.

Province of Lower Canada	} <i>In the King's Bench.</i>
District of Quebec.	

No.	{ John Thomas	Plaintiff
	{ William Wilson	Defendant

TO THE HONORABLE THE JUSTICES of
his Majesty's Court of King's Bench for
the District of Quebec.

John Thomas of the City of Quebec
in the County of Quebec in the District
of Quebec merchant complaining of
William Wilson of the parish of St.
John in the county of Cornwallis in the
same District of Quebec by this his
declaration in Evocation doth humbly
represent.

That [*Set out the facts of the case
distinctly as to time, place, person, and
circumstance.*]

All which allegations the said John
Thomas doth hereby aver to be true and

well founded in fact and in law, and the same will verify, prove, and maintain, when and as this honorable Court shall direct.

John Thomas
Wherefore, the premisses considered, the said ~~William Wilson~~ humbly prays that, for the causes aforesaid, by the judgment of this Honorable Court . . .

NUMBER XXXV. (Page 96.)

Inscription of a cause upon the roll de droit for hearing en droit upon an exception déclatoire, à la forme, or dilatoire.

Province of Lower Canada,	}	<i>In the</i>
District of Quebec.		<i>King's Bench.</i>

No.	{	John Thomas	Plaintiff.
		<i>vs.</i>	
	}	William Wilson	Defendant.

I do hereby inscribe this cause upon the roll *de droit* for hearing *en droit* upon the pleadings, by which the issue ~~(or issues)~~ hath ~~(or have)~~ been raised

and perfected upon the exception *déclinatoire* (*peremptoires à la forme* and *dilatoire*) in this cause fyled.

Dated the - - - day of - - 18 - -

A. B.

Attorney for - - -

NUMBER XXXVI. (Page 96.)

Notice of the inscription of a cause upon the roll de droit for hearing en droit upon an exception déclinatoire, à la forme, or dilatoire.

Province of Lower Canada, } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { John Thomas Plaintiff.
 } *vs.*
 William Wilson Defendant.

Sir,

Take notice that this cause is inscribed upon the roll *de droit* for hearing *en droit* upon the pleadings by which the issue (or issues) hath (or have) been

raised and perfected upon the exception
déclinatoire (*réemptoire à la forme*
and dilatoire) in this cause fyled.

Dated - - - the - - - day of - - - 18 - - .

A. B.

Attorney for . . .

To Mr. - - -

Attorney for - - - }

NUMBER XXXVII. (Page 97.)

Inscription of a cause upon the roll des
enquêtes for the adduction of proof
upon an exception déclinatoire &c.
without a hearing on droit.

Province of Lower Canada, }

District of Quebec. }

In the
King's
Bench.

No. { John Thomas Plaintiff
 { William Wilson vs. Defendant.

. I do hereby inscribe this cause upon
 the roll *des enquêtes* for the adduction
 of proof generally upon the issue (or

issues) raised and perfected upon the exception *déclinatoire* (*péremptoire à la forme and dilatoire*) in this cause fyled, without a hearing *en droit* upon the pleadings.

Dated the --- day of --- 18 . . .

A. B.

Attorney for - -

NUMBER XXXVIII. (Page 97.)

Notice of the Inscription of a cause upon the roll des enquêtes for the adduction of proof upon an exception déclinatoire &c. without a hearing en droit.

Province of Lower Canada,
District of Quebec.

} In the
King's
Bench.

No. { John Thomas Plaintiff
vs.
William Wilson Defendant.

SIR,

Take notice that this cause is inscribed

G g

upon the Roll *des enquêtes* for the adduction of proof generally upon the issue (or issues) raised and perfected upon the exception *déclinatoire* (*peremptoire à la forme and dilatoire*) in this cause filed, without a hearing *en droit* upon the pleadings.

Dated the --- day of --- 18 ---

A. B.

Attorney for --

To --- }
Attorney for --- }

NUMBER XXXIX. (Page 100.)

Inscription of a cause upon the roll de droit for hearing en droit upon exceptions peremptoires en droit &c.

Province of Lower Canada,	} <i>In the</i>
District of Quebec.	

No.	{ John Thomas	Plaintiff.
	vs.	
	{ William Wilson	Defendant.

I do hereby inscribe this cause upon

the roll *de droit* for hearing *en droit* upon the pleadings, by which the issue (or issues) hath (or have) been raised and perfected upon the temporary exceptions *peremptoires en droit* (perpetual exceptions *peremptoires en droit* and *défenses au fonds en droit* and *en fait*) in this cause fyled.

Dated the - - - day of - - - 18 - - -

A. B.

Attorney for - -

NUMBER XL. (Page 100.)

Notice of the inscription of a cause upon the roll de droit for hearing en droit upon exceptions peremptoires en droit &c.

Province of Lower Canada	}	<i>In the</i>
District of Quebec.		<i>King's Bench.</i>

No. { John Thomas - - - - Plaintiff
vs.
William Wilson Defendant.

SIR,

Take notice, that this cause is inscribed

G g 2

ed upon the roll *de droit* for hearing *en droit* upon the pleadings by which the issue (or issues) hath (or have) been raised and perfected upon the temporary exception *peremptoire en droit* (perpetual exception *peremptoire en droit* and *defense au fonds en droit* and *en fait*.) in this cause fyled.

Dated the --- day of --- 18 ---

A B.

Attorney for --

To ----- }
Attorney for --- }

NUMBER XLI. (Page 102.)

Inscription of a cause upon the roll des enquêtes for the adduction of proof upon exceptions peremtoires en droit &c. without a hering en droit.

Province of Lower Canada }

District of Quebec. }

John Thomas

In the

King's

Bench.

Plaintiff.

No. {

vs.

William Wilson

Defendant.

I do hereby inscribe this cause upon

the roll *des enquêtes* for the adduction of proof generally upon the issue (or issues) raised and perfected upon the temporary *exception peremptoire en droit* (perpetual *exception peremptoire en droit* and *defense au fonds en fait*) in this cause fyled, without a hearing *en droit* upon the pleadings.

Dated the - - - day

18 - - -

A. B.

Attorney for - -

NUMBER XLII. (Page 102.)

Notice of the inscription of a cause upon the roll *des Enquêtes* for the adduction of proof, upon exceptions *peremptoires en droit* &c. without a hearing *en droit*.

Proyince of Lower Canada,	}	<i>In the King's Bench.</i>
District of Quebec.		
No. {	John Thomas	Plaintiff.
	William Wilson	
		Defendant.

SIR,

Take notice that this cause is ins-



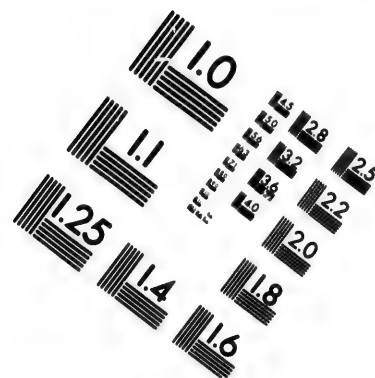
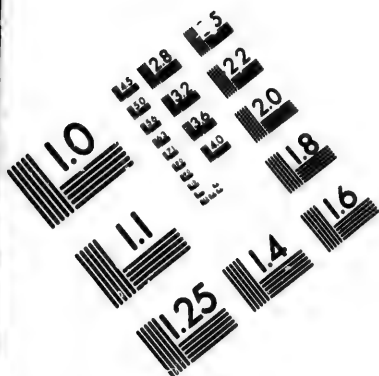
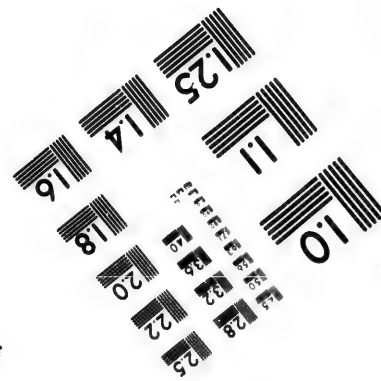
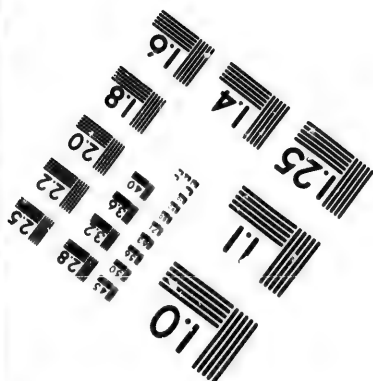
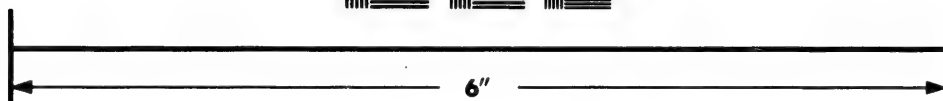
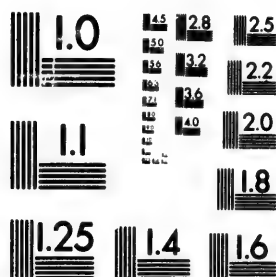
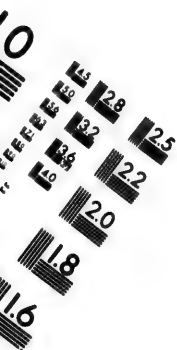


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Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



cribed upon the roll *des enquêtes* for the adduction of proof generally upon the issue (or issues) raised and perfected upon the temporary exception *peremptoire en droit* (perpetual exception *peremptoire en droit* and defense au fond *en fait*) in this cause filed, without a hearing *en droit* upon the pleadings.

Dated the -- day of --- 18..

A. B.

Attorney for ---

To Mr. ---
Attorney for --- }

NUMBER XLIII. (Page 104.)

Inscription of a cause upon the Roll des Enquêtes for the adduction of proofs, pursuant to an Interlocutory judgment,

Province of Lower Canada, } In the
District of Quebec. } King's Bench.

No. { John Thomas Plaintiff.
vs.
Will am Wilson Defendant.

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Province

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the roll des enquêtes, ~~and set it down~~ for
 the adduction of proof generally upon
 the issue (or issues) raised and perfected
 upon the exception *déclinatoire* (*peremp-*
toire à la forme, dilatoire, peremptoire
en droit temporary, peremptoire en droit
perpetual and defense au fonds en fait)
 in this cause filed, pursuant to the In-
 terlocutory judgment of the --- of ---
 instant (or last) by which the adducti-
 on of proof upon the aforesaid issue (or
 issues) hath (or have) been ordered.

Dated the ... day of ... 18...

A. B.

Attorney for - - -

NUMBER XLIV. (Page 104)

*Notice of the inscription of a cause upon
 the roll des enquêtes for the adduction
 of proof pursuant to an interlocutory
 judgment.*

Province of Lower Canada

District of Quebec.

John Thomas

No.

William Wilson

In the

King's

Bench.

Plaintiff

vs.

Defendant.

SIR,

18
Take notice that this cause is inscribed upon the roll *des enquêtes* ~~and set down~~ for the adduction of proof generally upon the issue (or issues) raised and perfected upon the exception *déclinatoire* (*peremptoire à la forme, dilatoire, peremptoire en droit temporary, peremptoire en droit perpetual, au fonds en fait*) in this cause filed, pursuant to the interlocutory judgment of the --- of --- instant (or last) by which the adduction of proof upon the aforesaid issue (or issues) hath (or have, been ordered.

Dated the --- day of ... 18...

A. B.

Attorney for ...

To Mr. }

Attorney for ... }

NUMBER XLV. (A.) (Page 106.)

*Inscription of a cause upon the Roll de
Droit for final hearing upon the
merits.*

Province of Lower Canada, }

District of Quebec, }

*In the
King's
Bench.*

No. **John Thomas** Plaintiff.
vs.
William Wilson Defendant.

I do hereby inscribe this cause upon the roll *de Droit*, for final hearing upon the merits, upon the issue (or issues) raised and perfected upon the exception *déclinatoire* (*peremptoire à la forme, dilatoire, peremptoire en droit temporary, peremptoire en droit perpetual, défense au fonds en fait*) in this cause fyled.

Dated the --- day of --- 18---

A. B.

Attorney for --

NUMBER XLV. B. (Page 106.)

Notice of the inscription of a cause upon the roll de Droit for final hearing upon the merits.

Province of Lower Canada

District of Quebec.

In the
 King's
 Bench.

H h

No. { John Thomas Plaintiff
vs.
William Wilson Defendant.

Sm,

Take notice that this cause is inscribed upon the Roll *de Droit* for final hearing upon the merits upon the issue (or issues) raised and perfected upon the exception *declinatoire* (*peremptoire à la forme, dilatoire, peremptoire en droit temporary, peremptoire en droit perpetual and defense au fonds en fait*) in this cause fyled.

Dated the . . . day of . . 18 . . .

A. B.

Attorney for ...

To }
Attorney for . . . }

NUMBER XLVI. (Page 117.)

Præcipe for Subpœna ad testificandum.

Province of Lower Canada, } In the
District of Quebec } King's
Bench.

Plaintiff
endant.

No. { John Thomas Plaintiff.
vs.
William Wilson Defendant.

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droit
en fait)

Subpæna to testify * between the
above named Plaintiff and the above
named Defendant on the part of the
Plaintiff (or Defendant)

Dated the - - day of - - 18..

A. B.

Attorney for . - -

NUMBER XLVII. (Page 117.)

Notice to produce paper writings.

....
B.
for ...

Province of Lower Canada } In the
District of Quebec. } King's
Bench.

No. { John Thomas Plaintiff.
vs.
William Wilson Defendant.

SIR,

Take notice that you are hereby re

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* If the Subpæna be to testify before
Arbitres or Experts, add here " before
Arbitres" (or " before Experts.)

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quired to produce before the Justices of the Court of King's Bench for the District of Quebec upon the - - - day of - - - instant (or next) at the hour of - - - in the forenoon at - - - and then and there to file a certain original paper writing bearing date &c. (*describing the writing to be produced*) and in default thereof that evidence of the contents of the said paper writing will then and there be offered.

Dated the - - - day of - - - 18 - - -

A B.

Attorney for - -

To Mr. - - -

Attorney for - - -

NUMBER XLVIII. (Page 118.)

Writ of Subpœna ad testificandum.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
Grace of GOD of the united kingdom
of GREAT BRITAIN AND IRELAND King,
defender of the faith.

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said City
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To A. B. . . . GREETING :

We command you that laying aside all and singular businesses and excuses you and each of you be and appear in your proper persons before us in our Court of King's Bench for our District of Quebec at our City of Quebec in our said District on --- the --- day of -- instant (*or next*) at ten of the clock in the forenoon of the same day then and there to testify all and singular those things which you or either of you know in a certain cause now depending in our said Court before us between ----- Plaintiff and . - - Defendant upon an action of... and this you or either of you shall by no means omit under the penalty upon each of you of L 100.

WITNESS THE HONORABLE ----- our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for the District of Quebec at our said City of Quebec the --- day of ... in the --- year of our reign.

NUMBER XLIX. (Page 118.)

Subpœna duces tecum.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
 Grace of God of the united kingdom of
GREAT BRITAIN AND IRELAND King,
 defender of the faith.

To A. B. . . . GREETING :

We command you that laying aside
 all and singular businesses and excuses
 you and each of you be and appear in
 your proper persons before us in our
 Court of King's Bench for our District
 of Quebec at our City of Quebec in our
 said District on - - - the - - - day of - -
 instant (*or next*) at ten of the clock in
 the forenoon of the same day, that you
 bring with you, and then and there pro-
 duce a certain paper writing, bearing
 date (*describe the thing to be produced*)
 and then and there testify and shew all
 and singular those things which you or
 either of you know, or which the said

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paper writing doth import, of, in or concerning a certain cause now depending in our said Court before us between - - - Plaintiff and - - - Defendant upon an action of - - - and this you or either of you shall by no means omit, under the penalty upon each of you of £100.

Witness the Honorable - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench, for the District of Quebec at our said City of Quebec the - - day of - - - in the - - year of our reign.

NUMBER L. (Page 121.)

Notice of motion.

Province of Lower Canada,	} <i>In the</i>
District of Quebec.	

No.	{	John Thomas	vs.	Plaintiff.
		William Wilson		Defendant.

SIR,

Take notice that this Honorable Court will be moved on - - - the - - -

day of - - instant (*or next*) or so soon
after as Counsel can be heard that (*or*
for)

Dated the ... day of ... 18...

A. B.

Attorney for - - -

To Mr. - - -

Attorney for ...

NUMBER LI. (Page 125.)

*Motion, that the Sheriff do bring in the
Body, and for amerciements in de-
fault thereof.*

Province of Lower Canada

District of Quebec.

{ John Thomas

No.

{ William Wilson Defendant.

In the
King's
Bench.

Plaintiff.

Motion that the Sheriff of the Dis-
trict of Quebec do bring in the Body
of the above named Defendant, sitting
the Court, on or before the ... day of
... instant (*or next*) or be amerced.

Dated the ... day of ... 18...

A. B.

Of Counsel for the Plaintiff.

NU

Motion

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No.

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NUMBER LII. (Page 125.)

*Motion that the Sheriff do bring in the
Body and for an Attachment in
default thereof.*

Province of Lower Canada, } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { John Thomas Plaintiff
 } *vs.*
 { William Wilson Defendant.

MOTION---That the Sheriff of the
District of Quebec do bring in the Body
of the above named defendant, sitting the
Court, on or before the . . . day of . . .
instant (*or next*) or shew cause on the . . .
day of . . . instant (*or next*) why an at-
tachment should not issue against him.

Dated the . . . day of . . . 18 . . .

A. B.

Of Counsel for the Plaintiff.

NUMBER LIII. (Page 125.)

Motion for Security for Costs.

I i

Province of Lower Canada } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { **John Thomas** Plaintiff.
William Wilson Defendant.

MOTION---That the proceedings in this cause be staid until security be given for the payment of costs.

Dated the - - - day of - - - 18 - -

A. B.

Of Counsel for - - -

NUMBER LIV. (Page 125.)

*Motion for hearing upon an Exception
déclinatoire &c. without an answer.*

Province of Lower Canada } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { John Thomas Plaintiff.
vs.
William Wilson Defendant.

MOTION—I do hereby confess and admit the allegations of fact set forth and contained in the exception *déclina-*

toire (péremptoire à la forme or dila-
toire) of the said William Wilson in this
 cause fyled and each and every of them,
 to be true, and do therefore move for
 hearing upon such exception upon its
 (or their) own merits without an answer.

Dated the . . . day of . . . 18 . . .

A B.

Of Counsel for - - -

NUMBER LV. (Page 126.)

Motion for leave to amend.

Province of Lower Canada,	} <i>In the</i> <i>King's</i> <i>Bench.</i>
District of Quebec.	

No.	{	John Thomas	Plaintiff.
		William Wilson	Defendant.

MOTION- -For leave to amend the
 (*Declaration*) in this cause fyled by
 striking out "the words" in the
 lines of the page thereof
 and inserting in lieu thereof the follow-

ing words viz. " (or by adding after the word . . . in the . . . page thereof the following words, viz. " . . . , aut aliter as the ease may require,) NISI CAUSA ON next.

Dated the - - - day of - - 18 - - -

A. B.

Of Counsel for - - -

NUMBER LVI. (Page 126.)

Motion for a Jury and writ of Venire facias.

Province of Lower Canada	}	<i>In the King's Bench.</i>
District of Quebec,		

No.	{	John Thomas	Plaintiff.
		William Wilson	Defendant.

The Plaintiff John Thomas doth hereby declare his option and choice to have and obtain the trial and verdict of a Jury in this cause, and doth thereupon move that a Jury of the City and Bailliage of Quebec be forthwith struck from

the first (or second) or book of Jurors of record in this Court, according to the course and practice of the Court, for the trial of the issue perfected between the parties in this cause upon the perpetual exception *peremptoire en droit* (or *défense en fait &c.*) in this cause styled, and that a *Venire facias* for summoning the Jury, which shall be so struck, do also forthwith issue returnable on . . . , the . . . day of . . . instant (or next) unless cause be shown to the contrary to-morrow,

Dated the . . . day of . . . 18 . . .

A. B.

Of Counsel for John Thomas,]

NUMBER LVII. (Page 126.)

Motion for a Reference to Arbitres.

Province of Lower Canada,	} <i>In the</i>
District of Quebec	
No { John Thomas	Plaintiff
	<i>vs.</i>
{ William Wilson	Defendant.

MOTION---That it be referred to Arbitres to be in this cause named, &c.

according to the course and practice of the Court, to hear and examine all matters in controversy between the parties in this cause and thereon to report on, or before the --- day of --- instant (or next.)

Dated the -- day of -- 18..

A. B.

of Counsel for

NOTE. All motions for references to *Arbitres* (or *Arbitrators*) "by consent" must be worded according to the agreement of the parties.

NUMBER LVIII. (Page 127.)

Motion for a reference to Experts.

Province of Lower Canada,	} <i>In the</i>
District of Quebec.	

No.	{	John Thomas	Plaintiff.
		William Wilson	Defendant.

vs.

MOTION----That it be referred to *Experts* to be in this cause named, according to the course and practice of

the Court to [*Here state the object or objects of the reference.*] and thereon to report on or before the --- day of --- instant (*or next.*)

Dated the --- day of --- 18 ---

A. B.

Of Counsel for ---

NOTE. All motions for references to Experts "*by consent*" must be worded according to the agreement of the parties,

NUMBER LIX. (Page 127.)

Motion to confirm a report of Arbitres or Experts.

Province of Lower Canada,	}	<i>In the</i>
District of Quebec.		<i>King's Bench.</i>

No.	{	John Thomas	Plaintiff
		William Wilson	Defendant.

MOTION---That the report of the *Arbitres* [*or Experts*] in this cause

fyled on the --- day of --- instant
(or last) be confirmed and homologated,
with costs, unless good and sufficient
cause to the contrary be shown on ---
the --- day of --- instant (or next)

Dated the --- day of ... 18 ...

A. B.

Of Counsel for ...

NUMBER LX. (Page 127.)

*Motion to set aside a report of Arbitres
or Experts.*

Province of Lower Canada,

District of Quebec.

In the
King's
Bench.

No.

John Thomas

Plaintiff.

vs.

William Wilson

Defendant.

MOTION--That the report of the
Arbitres [or Experts] in this cause
fyled on the ... day of ... instant (or
last) be set aside with costs, unless good
and sufficient cause to the contrary be

shown on
(or next).

Dated

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(or next.)

Dated the . . . day of . . . 18 . . .

A. B.

Of Counsel for . . .

NUMBER LXI. (Page 127.)

*Motion for a rule to pay money into
Court.*

Province of Lower Canada }

District of Quebec. }

*In the
King's
Bench.*

No. { John Thomas Plaintiff,
 { *vs.*
 { William Wilson Defendant.

MOTION---That it be ordered, that
the defendant shall pay to the Plaintiff
L - - - with costs to be taxed, if the
Plaintiff will accept thereof in full dis-
charge of the *demande* contained in the
declaration in this cause fyled, and that
thereupon all proceedings in this action
be staid ; but if the Plaintiff will not

K k

accept thereof in full discharge of the said *demande*, then, that the said Defendant shall immediately bring the said sum of L - - - into Court and that the said sum be considered as struck out of the declaration and be paid out of Court to the Plaintiff, and that the Plaintiff shall be permitted to have judgment for so much only as he shall prove beyond the said sum.

Dated the - - - day of - - 18 - - -

A. B.

Of Counsel for - -

NUMBER LXII. (Page 127.)

Motion for leave to examine upon facts et articles.

Province of Lower Canada,	} In the
District of Quebec	

No.	{ John Thomas	Plaintiff
	vs.	
	{ William Wilson	Defendant.

MOTION---That William Wilson the Defendant in this cause do appear in

this Court on --- the --- day of --- instant (*or next*) at the hour of --- in the forenoon, then and there to answer upon interrogatories upon *faits et articles* to be exhibited, served and filed by John Thomas the Plaintiff in this cause according to the course and practice of the Court.

Dated the -- day of --- 18..

A. B.

Of Counsel for

NOTE. If the interrogate be without the jurisdiction the motion must be varied according to the circumstances.

NUMBER LXIII. (Page 128.)

Motion to defer the serment decisoire

Province of Lower Canada,

District of Quebec.

} *In the
King's
Bench*

No. { John Thomas Plaintiff.

{ William Wilson Defendant.

MOTION. That William Wilson the
K k 2

Defendant in this cause do appear in this Court on - - - the - - - day of - - - instant (*or next*) at the hour of - - - in the forenoon, then and there to answer upon the *serment decisoire* unto the questions and interrogatories herein after exhibited, and of and concerning the matters of fact therein mentioned, that is to say,

1st. Is it or is not true that [*here state distinctly the matters of fact to be deferred.*]

All which matters of fact in the afore-said questions and interrogatories mentioned, and each and every of them the said John Thon as the Plaintiff in this cause doth hereby defer to the *serment decisoire* of him the said William Wilson.

Dated the . . . day of . . . 18 . . .

A. B.

Of Counsel for - - -

NOTE. If the Defendant be without the jurisdiction of the Court the motion must be varied according to the circumstances.

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NUMBER LXIV. (Page 129.)

*Motion to confirm and homologate a
report of Distribution and Collocation.*

Province of Lower Canada, } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { John Thomas Plaintiff
 } *vs.*
 William Wilson Defendant.

That the report of Distribution and
Collocation [*or report of Distribution*
or report of Collocation.] made by the
Prothonotary, and in this cause fyled on
the --- day of --- instant (*or last*)
be confirmed and homologated unless
good and sufficient cause to the contrary
shall be shown on --- the --- day
of --- instant (*or next*)

Dated the. --- day of ... 18 ...

A. B,

Of Counsel for ---

NUMBER LXV. (Page 136)

Commission Rogatoire for the examination of a party upon faits et articles.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the grace of God of the united kingdom of **GREAT BRITAIN AND IRELAND** King, defender of the faith.

TO THE CHIEF JUSTICE AND JUSTICES of our Court of King's Bench for our District of Montreal.

GREETING :

WHEREAS in our Court of King's Bench for our District of Quebec in a certain cause there depending before us in which John Thomas of our City of Quebec in our District of Quebec merchant is Plaintiff, and William Wilson of the parish of Saint John in our said District of Quebec yeoman, is Defendant, in an action of - - - certain interrogato-

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ries upon *faits et articles* have been exhibited and propounded by the said John Thomas unto the said William Wilson, and leave thereupon to examine the said William Wilson hath in our said Court been granted unto the said John Thomas, and whereas it hath been shown to us that the personal attendance of the said William Wilson cannot be had in our said Court, without great inconvenience, by reason of his residence within the limits of your jurisdiction,

Therefore we have authorised and empowered and by these presents do authorise, empower and require you and any of you, at such time and place as you or any of you shall appoint, carefully to examine the said William Wilson upon the interrogatories hercunto annexed, and each of them, and upon the corporal oath of the said William Wilson first taken before you, or such of you as shall so examine the said William Wilson, to cause the answers of the said William Wilson thereunto to be reduced to writing and to be signed as well by the said William Wilson as by

such of you as shall examine the said William Wilson, and the same and every of them so taken to annex unto these presents, the whole to return and send under your signatures, or the signatures of such of you as shall so examine the said William Wilson, unto our Justices of our said Court of King's Bench for our District of Quebec at our City of Quebec, with all convenient speed (*or on or before the --- day of --- instant (or next)*) closed, under the seal of our said Court of King's Bench for our District of Montreal.

Witness the Honorable - - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for our District of Quebec at our said City of Quebec the --- day of - - - in the --- year of our reign.

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NUMBER LXVI. (Page 137.)

Commission Rogatoire for the examination of witnesses.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the grace of God of the united kingdom of **GREAT BRITAIN AND IRELAND King,** defender of the faith.

TO THE CHIEF JUSTICE AND JUSTICES of our Court of King's Bench for our District of Montreal **GREETING :**

WHEREAS in our Court of King's Bench for our District of Quebec in a certain cause there depending before us in which **John Thomas** of our City of Quebec in our District of Quebec merchant is Plaintiff and **William Wilson** of the parish of Saint John in our said District of Quebec is Defendant in an action of - - - it hath been shown unto us, that the personal attendance of divers material witnesses in the said cause cannot be had in our said Court

without great inconvenience, by reason of their residence within the limits of your jurisdiction.

We have therefore authorised and empowered, and by these presents do authorise empower and require you and any - - - of you, at such time and place or times and places as you or any --- of you shall appoint, carefully to examine all such witnesses as then and there shall be produced before you, or any -- of you, by the said John Thomas and William Wilson or by either of them and upon the interrogatories herunto annexed and each of them upon the respective corporal oaths of such witnesses first taken before you, or such of you as shall so examine such witnesses; to cause the answers thereunto of each witness so produced sworn and examined to be reduced to writing and to be signed, as well by such witness as by you or such of you as shall so examine such witness, and the same and every of them so taken to annex unto these presents, and the whole return and send under your signatures or the signature of such of you as shall so examine such witnesses unto our

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Justices of our said Court of King's Bench for our District of Quebec at our City of Quebec, with all convenient speed, (or on, or before the - - - day of - - - instant or next) closed under the seal of our said Court of King's Bench for our District of Montreal.

Witness the Honorable - - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for our District of Quebec at our said City of Quebec the - - - day of - - - in the - - - year of our reign.

NUMBER LXVII. (Page 137.)

Commission in the nature of a Commission Rogatoire for the examination of Witnesses.

Province of Lower Canada }

District of Quebec. }

GEORGE THE THIRD by the grace of God of the united kingdom of

GREAT BRITAIN AND IRELAND King,
defender of the faith.

To A. B. of &c. and C. D. of &c.
GREETING :

WHEREAS in our Court of King's Bench for our District of Quebec, in a certain cause there depending before us, in which John Thomas of our City of Quebec in our District of Quebec merchant is Plaintiff and William Wilson of the parish of Saint John in our said District of Quebec is Defendant, in an action of - - - it hath been shown unto us that the personal attendance of divers material witnesses in the said cause cannot be had in our said Court without great inconvenience, by reason of their residence and the distance thereof from our said City of Quebec ;

We have therefore assigned, authorised and empowered, and by these presents do assign authorise and empower you and any two of you, at such time and place or times and places as you, or any two of you shall appoint, carefully to examine all such witnesses as then and there shall be produced before you, or any two of you, by the said John Tho-

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mas and William Wilson, or by either of them, upon the interrogatories hereunto annexed and each of them, and upon the respective corporal oaths of such witnesses first taken before you, or such of you as shall so examine such witnesses, to cause the answers thereunto of each witness so produced, sworn, and examined to be reduced to writing, and to be signed as well by such witness as by you, or such - - - of you as shall so examine such witness ; and the same and every of them so taken to annex unto these presents and the whole to return and send under your signatures, or the signature of such of you as shall so examine such witnesses, unto our Justices of our said Court of King's Bench for our District of Quebec at our City of Quebec with all convenient speed, (*or on, or before the - - - day of - - - instant or next*) closed under your seals, or the seals of such of you as shall so examine such witnesses ; and we do command you and every of you that, before you act in the premisses by virtue of this commission, you do severally take the oath first specified in the schedule hereunto an-

nexed, and we do hereby give unto you and unto each of you full power and authority jointly or severally to administer such oath to the others, or any other of you ; and we do further command that all and every the Clerk and Clerks who shall be employed in taking, writing, transcribing, or engrossing the deposition or depositions of any witness, or witnesses who shall be examined by virtue of this commission shall, before he or they be permitted to act as Clerk or Clerks as aforesaid or be present at such examination, severally take the oath next specified in the said schedule hereunto annexed and we do hereby give unto you and unto each of you full power and authority jointly and severally to administer such oath to such Clerk or Clerks and unto each and every of them ; And we do lastly command that every witness who shall be produced for examination upon this commission, before his or her examination by virtue thereof shall be had, do take the oath last specified in the said schedule hereunto annexed ; and we do hereby give unto you and unto any two of you full power and authority to

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administer such oath unto each and every such witness.

Witness the Honorable - - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for our District of Quebec, at our said City of Quebec the - - - day of - - - in the - - - year of our reign.

NUMBER LXVIII. (Page 137)

Oath of a Commissioner upon a Commission to examine witnesses in the nature of a Commission Rogatoire.

“ You shall according to the best of your skill and knowledge, truly, faithfully and without partiality to any or either of the parties in this cause take the examinations and depositions of all and every witness and witnesses to be produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories hereunto also annexed, and you shall not publish disclose or make known to any person or persons whomsoever, except to the Clerk of

Clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of such witnesses or any of them to be taken by you and the other Commissioners in the said commission named, or any of them by virtue of the said commission, until publication thereof by the order of two or more of the Justices of his Majesty's Court of King's Bench for the District of Quebec, shall be made."

"SO HELP YOU GOD."

NUMBER LXIX. (Page 137.)

Oath of the Clerk, upon a Commission to examine witnesses in the nature of a Commission Rogatoire.

"You shall truly, faithfully and without partiality to any or either of the parties in this cause take, write down, transcribe and engross the deposition of all and every witness and witnesses produced and examined by the Commissioners or any of them named in the Commission hereunto annexed, as for forth as you are directed and employed by the

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said Commissioners, or any of them to take, write down, transcribe, or engross the said depositions, or any of them. And you shall not publish, disclose, or make known to any person, or persons whomsoever the contents of all, or any of the depositions of the witnesses, or of any of them to be taken, wrote down, transcribed, or engrossed by you, or whereto you shall have recourse, or be in any wise privy, until publication thereof, by the order of two or more of the Justices of his Majesty's Court of King's Bench for the District of Quebec, shall be made."

" So HELP YOU GOD."

NUMBER LXX. (Page 138.)

Oath of a Witness upon a Commission in the nature of a Commission Rogatoire.

" You shall true answer make to all such questions as shall be asked of you upon these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the

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whole truth and nothing but the truth."

" So HELP YOU GOD."

NUMBER LXXI. (Page 147)

Writ of venire facias.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
grace of God of the united kingdom of
GREAT BRITAIN AND IRELAND King,
defender of the faith.

To the Sheriff of our District of
Quebec. **GREETING :**

We command you that you cause to
come before us in our Court of King's
Bench for our District of Quebec, at our
City of Quebec in our said District
on - - - the - - - day of - - - instant (or
next) at ten of the clock in the forenoon
the several persons named in the panel
hercunto annexed to make a Jury of the
country between John Thomas, of &c.
the Plaintiff and William Wilson of &c.

Defendant
as well
said Will
matter in
ves upon
this writ.

Witness
Chief Jus
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Justices
Bench for
said City
in the - -

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Defendant in an action of - - - because as well the said John Thomas as the said William Wilson (between whom the matter in variance is) have put themselves upon that Jury, and have then there this writ.

Witness the Honorable - - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for our District of Quebec, at our said City of Quebec the - - - day of - - - in the - - - year of our reign.

NUMBER LXXII. (Page 160.)

Subpœna ad testificandum before Arbitres, Experts &c.

Province of Lower Canada,

District of Quebec.

GEORGE THE THIRD by the grace of God of the united kingdom of GREAT BRITAIN AND IRELAND King, defender of the faith.

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To A. B. &c. GREETING:

We command you that, laying aside all and singular businesses and excuses whatsoever, you and each of you be and appear in your proper persons at - - - on - - - (the - - - day of - - - instant (or next) at the hour of - - - in the - - - noon before C. D. of &c. and E. F. of &c. Arbitres (or Experts) named in our Court of King's Bench for our District of Quebec in a certain cause there depending, in which - - - of - - - is Plaintiff and - - - of - - - is Defendant, in an action of - - - then and there to testify all and singular those things which you or either of you know in the said cause, and this you or either of you shall by no means omit, under the penalty of L 100.

Witness the Honorable - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench, at our City of Quebec in our said District the - - - day of - - - in the - - - year of our reign.

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NUMBER LXXIII. A. (Page 160.)

Commission to administer oaths to Ex-
pers and Witnesses &c.

Province of Lower Canada }

District of Quebec. }

GEORGE THE THIRD by the
 grace of God of the united kingdom of
GREAT BRITAIN AND IRELAND King,
 defender of the Faith,

To ---

GREETING :

WHEREAS in our Court of King's
 Bench for our District of Quebec, in a
 certain cause there depending before us
 undetermined, in which John Thomas of
 our City of Quebec in our District of
 Quebec merchant is Plaintiff and Wil-
 ham Wilson of the parish of Saint John
 in our said District of Quebec yeoman is
 Defend, in an action of --- A. B. of &c.
 yeoman C. D. of &c. yeoman and E.
 F. of &c. Trader have been duely no-
 minated and appointed to be Experts;
 And whereas it hath been shown to us
 that the personal attendance of the said
 A. B. C. D. and E. F. and of divers

material witnesses to be examined in the said cause by, ~~of~~ before them the said A. B. C. D. and E. F. cannot be had in our said Court, without great inconvenience by reason of their residence and the distance thereof from our said City of Quebec ; We have therefore assigned authorised and empowered you the said - - - - to administer unto them the said A. B. C. D. and E. F. and unto each of them the oath prescribed and directed to be administered to Experts, in and by the Provincial Statute made and passed in the forty eighth year of our reign intituled " An Act to authorise the Judges " in civil causes in this Province to " delegate the power of administering " oaths in certain cases therein mentioned," and unto the said witnesses, and each of them, the oath by the same Statute prescribed and directed to be administered to witnesses, and to reduce to writing the testimony, and to certify the depositions of such witnesses according to the Provisions in the said Statute contained, which we do hereby require and strictly enjoin you in all things to pursue,

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Witness the Honorable ----- our
Chief Justice of and for our said Pro-
vince of Lower Canada and one of the
Justices of our said Court of King's
Bench for our District of Quebec, at
our said City of Quebec the --- day
of --- in the --- year of our reign.

NUMBER LXXIII. B. (Page 160.)
*Commission to administer oaths to wit-
nesses to be examined before Arbitres.*

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
grace of God of the united kingdom of
GREAT BRITAIN AND IRELAND King,
defender of the faith.

To -----

GREETING :

WHEREAS in our Court of King's
Bench for our District of Quebec in a
certain cause there depending before us
undetermined in which John Thomas, of
our City of Quebec in our District of
Quebec merchant is Plaintiff and Wil-
iam Wilson of the parish of Saint John

yeoman in our said District of Quebec, is Defendant, in an action of - - - A. B. of &c. yeoman and C. D. of &c. yeoman have been duly nominated and appointed to be Arbitres (or Arbitrators). And whereas it hath been shown to us that the personal attendance of divets material witnesses to be examined in the said cause, by and before the said A. B. and C. D. cannot be had in our said Court, without great inconvenience by reason of their residence and the distance thereof from our said City of Quebec, We have therefore assigned, authorised and empowered you the said - - - to administer unto the said witnesses, and unto each of them the oath prescribed and directed to be administered to witnesses in and by the Provincial Statute made and passed in the forty eighth year of our reign intituled "An Act to authorise the Judges in civil causes in this Province to delegate the power of administering oaths in certain cases therein mentioned" according to the provisions in the said Statute contained, whi h we do hereby require and strictly enjoin you in all things to pursue.

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Witness the Honorable ----- our
Chief Justice of and for our said Pro-
vince of Lower Canada and one of the
Justices of our said Court of King's
Bench for our District of Quebec, at
our City of Quebec the --- day of
in the year of our reign.

NUMBER LXXIV. (Page 161.)

Writ of Capias ad Satisfaciendum.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
grace of God of the united kingdom of
GREAT BRITAIN AND IRELAND King,
defender of the faith.

To the Sheriff of our District of
Quebec. **GREETING :**

WHEREAS heretofore before us, in our
Court of King's Bench for our District
of Quebec, John Thomas of &c. mer-
chant, by the judgment of our said

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Court bearing date the . . . day of . . .
 in the year of our Lord Christ
 recovered against William Wilson of
 &c. yeoman, in an action there
 depending L . . . for a certain debt, (or
for damages, aut aliter, as the case may re-
quire) (*with interest on the sum of L . .*
from the . . . day of . . . in the year of
our Lord Christ . . . at the rate of . . .
pounds per centum per annum until paid,
and costs since taxed at L . . .) as by
 the records of our said Court of King's
 Bench for our District of Quebec doth
 appear ; and whereas the said judg-
 ment remains as yet unsatisfied, there-
 fore we command you to take the said
 William Wilson, if he shall be found
 in your District, and him safely keep, so
 that you may have his body before us, in
 our said Court of King's Bench for our
 District of Quebec, on . . . the . . . day
 of next, to satisfy the said John
 Thomas of the debt, (*interest*) and costs
 aforesaid * and have then and there also
 this writ.

* If the judgment has been satisfied
 in part say " to satisfy the said John

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Witness the Honorable . . . our
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 Justices of our said Court of King's
 Bench for our District of Quebec, at our
 City of Quebec, the . . . day of . . . in
 the . . . year of our reign.

NUMBER LXXV. (Page 161.)

Writ of Fieri Facias.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
 grace of God of the united kingdom of
 GREAT BRITAIN AND IRELAND King,
 defender of the faith.

To the Sheriff of our District of Que-
 bec GREETING :

Thomas of a residue or the said debt and
 costs remaining unpaid" to wit, of the
 sum of L - - - with interest on the sum
 of L - - - from the - - - day of - - - in
 the year of our Lord Christ - - - at the
 rate of - - - pounds per centum per
 annum until paid.

N n 2

Whereas heretofore before us, in our Court of King's Bench for our District of Quebec, John Thomas of &c. merchant, by the Judgment of our said Court bearing date the . . . day of . . . in the year of our Lord Christ . . . recovered against William Wilson of . . . &c. yeoman, in an action . . . there depending L . . . for a certain debt (or for damages, *aut aliter* as the case may require, with interest on the sum of L . . . from the . . . day of . . . in the year of our Lord Christ . . . at the rate of . . . pounds per centum per annum until paid and costs since taxed at L . . .) as by the records of our said Court of King's Bench for our District of Quebec doth appear ; And whereas the said judgment remains as yet unsatisfied, Therefore we command you that of the Goods and Chattels, Lands and Tenements of the said William Wilson, in your District, you do cause to be made and levied the sum of L . . . (the debt and costs) and (if part of either has been paid) add "being the residue of the said debt (or damages) and costs remaining unpaid" and such further sum as your lawful fees and disbursements

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upon this writ [and interest at the rate of six pounds per centum per annum on the sum of L . . . from the . . . day of . . . in the year of our Lord Christ . . . until the day upon which the said sum of L . . . shall be so made and levied] (together) shall amount to . . . and have that money, such fees and disbursements as aforesaid being therefrom first deducted, before us, in our said Court of King's Bench for our District of Quebec, at our City of Quebec, on . . . the . . . day of . . . next, to render to the said John Thomas for his debt, interest and costs aforesaid [or for the said residue of his said debt and costs and interest as aforesaid,] and have then and there also this writ.

Witness the Honorable - - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for our District of Quebec, at our said City of Quebec the - - - day of - - - in the - - - year of our reign.

NUMBER LXXVI. (Page 161.)

Writ . f Venditioni Exponas.

Province of Lower Canada, }

District of Quebec. }

GEORGE THE THIRD by the
 grace of God of the united kingdom of
GREAT BRITAIN AND IRELAND King,
 defender of the faith.

To the Sheriff of our District of
 Quebec. **GREETING :**

WHEREAS heretofore before us, in our
 Court of King's Bench for our District
 of Quebec, John Thomas of &c. mer-
 chant, by the judgment of our said
 Court bearing date the --- day of ---
 in the year of our Lord Christ --- re-
 covered against William Wilson of &c.
 yeoman, in an action --- there depend-
 ing **L---** for (*a certain debt, or for da-*
mages, aut aliter as the case may require,
with interest on the sum of L--- from
the --- day of --- in the year of our
Lord Christ --- at the rate of --- pounds
per centum per annum until paid, and
costs since taxed at L---) as by the

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records of our said Court of King's Bench for our District of Quebec doth appear ; and whereas the said judgment remaining unsatisfied by our writ we lately commanded you that of the goods and chattels, lands and tenements of the said William Wilson, in your District, you should cause to be made and levied the sum of L - - - and such further sum as your lawful fees and disbursements upon that writ and interest at the rate of six pounds per centum per annum upon the sum of L . . . from the . . . day of . . . in the year of our Lord Christ . . . until the day upon which the said sum of L . . . should be so made and levied, (together) should amount to, and that you should have that money, such fees and disbursements as aforesaid being therefrom first deducted, before us, in our said Court of King's Bench for our District of Quebec, at our City of Quebec, upon the . . . day of . . . now last past, to render to the said John Thomas for his debt interest and costs aforesaid [or for a residue of his said debt and costs remaining unpaid, with interest as aforesaid.] And

whereas on that day, in our said Court of King's Bench for our District of Quebec, at our City of Quebec, you did return to us, that by virtue of the said writ to you directed, you had taken &c. (*according to the return to the fieri facias*) and that the said &c. remained in your hands unsold (*aut aliter according to the return.*) Therefore we being desirous that the said John Thomas should be satisfied his said debt, interest and costs (*or damages and costs*) do command you to sell or cause to be sold, in due course of law, the said goods and chattels (*or lands and tenements*) of the said William Wilson so by you in form aforesaid taken, for the best price that can be got for the same; and have the money arising from such sale, your lawful fees and disbursements aforesaid, as well upon the aforesaid writ as upon this writ being first therefrom deducted, before us, in our said Court of King's Bench for our District of Quebec, at our City of Quebec, on . . . the - - - day of - - - next, to render to the said John Thomas, for his debt, interest and costs aforesaid [*or for the said residue of*

his said
aforesaid
this writ

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his said debt and costs and interest as aforesaid] and have then and there also this writ.

Witness the Honorable - - - - - our Chief Justice of and for our said Province of Lower Canada and one of the Justices of our said Court of King's Bench for our District of Quebec, at our said City of Quebec the - - - day of - - in the - - - year of our reign.

NUMBER LXXVII. A. (Page 161.)

Præcipe for a writ of fieri facias and for a writ of capias ad satisfaciend.

Province of Lower Canada } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. 289

Anno, 1809.

{ John Thomas of the City of Quebec in the District of Quebec merchant Plaintiff.

vs

{ William Wilson of the parish of St. John in the County of Devon in the District of Quebec yeoman Defendant.

I demand a writ of Execution for the
Plaintiff John Thomas viz.

WRIT (*Fieri Facias to the Sheriff of
Quebec against the goods and chat-
tels, lands and tenements of the
Defendant William Wilson, or
Capias ad satisfaciendum against
the body of the Defendant Willi-
am Wilson.*)

JUDGMENT. (20 October 1809.)

PRINCIPAL (L 236-16-7 Currency debt
(or damages.)

COSTS TAXED (L 10-11-6)

OF EXECUTION 11-6

L 11 - 2 - 0

INTEREST (on L 100 from 1st June
1808 till paid at L 6 per cen-
tum per annum.)

ACTION (Debt upon Contract.)

SATISFACTION (nil) or on
principal L 40-6-9

On Costs 10-11-6

L 50-18-3

On
of
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RETURN
Dated

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No. 239

Anno 1

On Interest from 1st
of June 1808 to 1st

June 1809 L 6-0-0

RETURNABLE (1st October 1810.)

Dated 24 February 1810.

A. B.

Attorney for
John Thomas.

NUMBER LXXVII. B. (Page 161.)

*Præcipe for a Writ of Venditioni
Exponas*

Province of Lower Canada,	} In the King's Bench.
District of Quebec.	

No. 239.

John Thomas of the City
of Quebec in the District
of Quebec merchant
vs. Plaintiff

Anno 1809.

William Wilson of the
parish of St. John in the
County of Devon in the
District of Quebec yeo-
man Defendant.

I demand a writ of Execution for the
Plaintiff John Thomas viz.

WRIT Venditioni Exponas to the Sheriff of the District of Quebec upon his return to the writ of Fieri Facias in this cause issued on the 1st of February 1810.

RETURABLE 1st. October 1810,

Dated 1st. June 1810.

A. B.
Attorney for
John Thomas,

NUMBER LXXVIII, (Page 165.)

*Election of a Domicile by an Opposant
who prosecutes in person.*

Province of Lower Canada,	} In the King's Bench.
District of Quebec,	

I William Stiles the Opposant in the foregoing Opposition named do appear in person and do hereby make my Election of a domicile at the house now

occupied by - - - situate in - - - street in
the upper (or lower) town of the City of
Quebec.

Dated the E - - day of - - - 1810.

WILLIAM STILES.

NUMBER LXXIX. (Page 166.)

*Opposition and Moyens d'opposition afin
de conserver.*

Province of Lower Canada,	} In the King's Bench.
District of Quebec.	

In the cause of

No.

{ John Thomas of the City
of Quebec in the District
of Quebec merchant
Plaintiff.

vs.

{ William Wilson of the
parish of St. John in the
County of Cornwallis in
the same District of Que-
bec yeoman Defendant.

TO THE HONORABLE THE JUSTICES of
his Majesty's Court of King's Bench for

the District of Quebec.

William Stiles of the parish of St. Thomas in the County of Devon in the District of Quebec Trader, by these his opposition and moyens d'opposition *afin de conserver*, doth humbly represent

That [*here set forth the facts on which the Opposition is founded distinctly as to time, place, person and circumstance.*]

All which allegations the said William Wilson doth hereby aver to be true and well founded in fact and in law, and the same will verify, prove, and maintain, when and as this Honorable Court shall direct. And for all and every the purposes of this opposition and moyens d'opposition the said William Stiles doth hereby elect his domicile at . . .

Wherefore, the premisses considered, the said William Stiles humbly prays that, for the causes aforesaid, by the judgment of this Honorable Court [*here set forth 1st. the special conclusions which the case may require, if there be any, then 2dly. the conclusions in distribution and Collocation, or in distribu-*

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**Opposition of William Stiles *afin de*
conservier**

SIR,

Take notice of my opposition *afin de conserver* within written, and that I do hereby require you to retain in your hands all and every the sum and sums of money which you have made or levied and now have, or hereafter shall make, or levy and have under or by virtue of any writ or writs of execution in this cause issued, until my said opposition shall have been heard and determined, in due course of law.

Dated the --- day of --- 18 --

A. B.

Attorney for William
Stiles the within named
Opposant.

To --- Esquire Sheriff }
of the District of Quebec. }

NUMBER LXXX. (Page 167)

*Affidavit of the truth of an opposition
afin de conserver by the Opposant.*

Province of Lower Canada, }

District of Quebec. }

William Stiles the above named oppo-
sant maketh oath and saith that what is
set forth and alledged to be matter of
fact in the above written opposition and
moyens d'opposition is true.

WILLIAM STILES.

Sworn the --- day of --- }
1810 before me. }

NUMBER LXXXI. (Page 173.)

*Contestation of a report of Distribution
and Collocation. &c.*

Province of Lower Canada, } *In the*
District of Quebec. } *King's*
 } *Bench.*

No. { John Thomas Plaintiff.
 } *vs.*
 } William Wilson Defendant.
 } *&*
 } William Stiles and Al. Opposants.

John Thomas the Plaintiff in this cause doth hereby contest the order of Distribution and Collocation set forth in the report of Distribution and Collocation of the Prothonotary, in this cause fyled on the --- day of ---- instant (*or last.*)

For that the said Prothonotary hath reported as follows, that is to say, [*here set out from the report that part which it is intended to contest.*]

P p

In which particular the said John Thomas doth contest the said Report, and doth hereby aver that by law [her] set out the pretension of the Contestant.

Wherefore the said John Thomas humbly prays that the said Report of the Prothonotary, in so far, be set aside, and that the order of Distribution and Collocation set forth in the said report be, in this respect, amended by the judgment of this Honorable Court, with costs.

Quebec the --- day of --- 18---

NUMBER LXXXII. (Page 173.)

Contestation of an Opposition afin de conserver)

Province of Lower Canada, } In the
District of Quebec. } King's
Bench.

In the cause of

No. { John Thomas Plaintiff.
vs.
{ William Wilson Deft.

John Thomas the Plaintiff, (or William Wilson the Defendant, or John Doe

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les afin

Date

NOTE
Notice
form.

Province

District

No.

SIR

Take
(as above)
of Will

one of the Opposants) in this cause, doth
contest the Opposition of William Stiles
afin de conserver in this cause fyled.

Dated the --- day of, --- 18 ---

A. B.

Attorney for ---

NOTE. Of the above Contestation
Notice is to be given in the following
form.

Province of Lower Canada,	} In the King's Bench.
District of Quebec.	

In the cause of

No.	{ John Thomas	Plaintiff.
	vs.	
	{ William Wilson	Defendant.

SIR,

Take notice that John Thomas &c.
(as above) doth contest the Opposition
of William Stiles *afin de conserver* in

this cause fyled, and hath fyled his contestation thereof.

Dated the --- day of --- 18 ---

A. B.

Attorney for
John Thomas.

To Mr. --- Attorney }
for William Stiles.

NUMBER LXXXIII. (Page 174.)

Inscription of a Contestation upon a report of Distribution &c. upon the Roll de Droit for hearing.

Province of Lower Canada,

District of Quebec,

No.

John Thomas

vs.

William Wilson

&

William Stiles and Al. Opposts.

In the
King's
Bench.

Plaintiff,

Defendant.

I do hereby inscribe this cause upon the Roll *de Droit* for hearing upon the Contestation of the Prothonotary's report of Distribution and Collocation, fyled by the above named John Thomas.

A. B.

MUMBER LXXIII. B. (Page 174.)

*Notice of the Inscriptton of a Contesta-
tion upon a report of Distribution &c.
upon the Roll de Droit for hearing.*

Province of Lower Canada,
District of Quebec: *In the King's Bench.*

No. { John Thomas Plaintiff.
vs.
William Wilson Defendant,
&
William Stiles and Al. Opposts.

SIR,

Take notice that this cause is inscribed upon the Roll *de Droit* for hearing upon the Contestation of the Prothonotary's Report of Distribution and Collocation fyled by the above named John Thomas. Dated the --- day of --- 18--.

A. B. Attorney for John Thomas.

To Mr. ----- }
Attorney for

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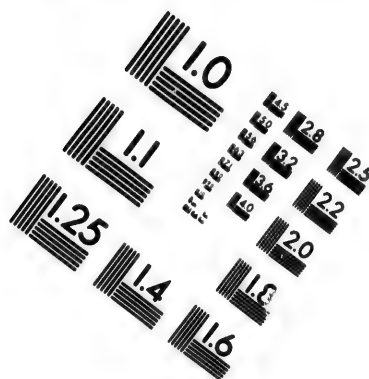
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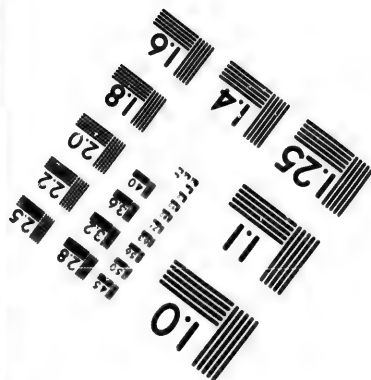
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